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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SPACE DATA CORPORATION, ) CV-16-3260-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) JULY 27, 2018  
)  
ALPHABET, INC. AND GOOGLE, LLC, ) PAGES 1-111  
)  
DEFENDANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: BY: **SPENCER HOSIE**  
**DIANE RICE**  
**BRANDON MARTIN**  
**DARRELL ATKINSON**  
HOSIE RICE, LLP  
600 MONTGOMERY STREET, 34TH FLOOR  
SAN FRANCISCO, CA 94111

FOR THE DEFENDANT: BY: **ROBERT ADDY VAN NEST**  
**MATTHIAS KAMBER**  
**SHAYNE HENRY**  
**ANDREW BRUNS**  
KEKER, VAN NEST & PETERS LLP  
633 BATTERY STREET  
SAN FRANCISCO, CA 94111

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

SAN JOSE, CALIFORNIA

JULY 27, 2018

P R O C E E D I N G S

(COURT CONVENED AT 9:00 A.M.)

THE COURT: ALL RIGHT. WE ARE PLAYING MUSICAL COURTROOMS. AS YOU KNOW, WE ARE HERE LAST WEEK, AND I THINK THIS IS A LOT MORE COMFORTABLE THAN MY SMALL COURTROOM, SO WE SHOULD BE IN GOOD SHAPE.

OKAY. THIS MORNING WE HAVE OUR CLAIMS CONSTRUCTION. AND IT LOOKS LIKE ALL THE EQUIPMENT IS WORKING.

MR. HOSIE, WE HAD AGREED THAT WE WERE GOING TO DO ONE PATENT AT A TIME AND KEEP AN EYE ON THE TIME; IS THAT RIGHT?

MR. HOSIE: INDEED, WE DID, YOUR HONOR.

GOOD MORNING. I'M SORRY I WAS 30 SECONDS LATE, I WAS LOITERING IN THE HALL.

THE COURT: NOTHING IMPORTANT HAPPENED IN YOUR ABSENCE.

MR. HOSIE: I HEAR THAT OFTEN.

THE COURT: ALL RIGHT.

THE CLERK: YOUR HONOR, CALLING CASE 16-CV-03260. SPACE DATA CORPORATION VERSUS ALPHABET, INC. AND GOOGLE, LLC.

COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

MR. HOSIE: GOOD MORNING, YOUR HONOR.

SPENCER HOSIE APPEARING FOR THE PLAINTIFF, SPACE DATA CORPORATION. WITH ME --

09:00:58 1 MR. MARTIN: GOOD MORNING, YOUR HONOR.

09:01:00 2 BRANDON MARTIN OF HOSIE RICE, APPEARING FOR SPACE DATA

09:01:04 3 CORPORATION.

09:01:05 4 MS. RICE: GOOD MORNING, YOUR HONOR.

09:01:06 5 DIANE RICE FROM HOSIE RICE.

09:01:08 6 MR. ATKINSON: DARRELL ATKINSON, YOUR HONOR.

09:01:11 7 MR. HOSIE: ALSO FROM HOSIE RICE.

09:01:12 8 THE COURT: ALL RIGHT. THANK YOU.

09:01:13 9 MR. VAN NEST: GOOD MORNING, YOUR HONOR.

09:01:14 10 BOB VAN NEST NEST OF KEKER & VAN NEST PETERS, FOR ALPHABET

09:01:18 11 AND GOOGLE, LLC.

09:01:19 12 AND I'M HERE WITH MATTHIAS KAMBER, SHAYNE HENRY, AND

09:01:22 13 ANDY BRUNS.

09:01:24 14 GOOD MORNING.

09:01:24 15 THE COURT: ALL RIGHT.

09:01:27 16 WHEN WE DID THE TUTORIAL LAST WEEK, IT LOOKED AS THOUGH

09:01:31 17 THE THREE HOURS ALLOTTED MIGHT BE A LITTLE BIT OF A PUSH. WITH

09:01:38 18 TWO CLAIMS AGREED TO, AND THANK YOU FOR LETTING ME KNOW EARLY

09:01:41 19 IN THE WEEK, IT WAS REALLY VERY COURTEOUS OF YOU AND IT

09:01:44 20 ASSISTED ME, WE CAN SPEND A LITTLE MORE TIME, OBVIOUSLY, ON THE

09:01:49 21 ONES STILL IN DISPUTE.

09:01:55 22 AND, YOU KNOW, I ALWAYS PREFER TO GO BACK AND FORTH

09:01:59 23 TERM-BY-TERM. WE TALKED ABOUT PATENT-BY-PATENT BECAUSE OF TIME

09:02:02 24 CONSTRAINTS, BUT WHY DON'T WE SEE HOW WE DO ON TIME BY DOING IT

09:02:11 25 TERM-BY-TERM. I THINK THAT SHOULD WORK.

09:02:14 1 MR. VAN NEST: I THINK IT WILL, YOUR HONOR.

09:02:15 2 THE COURT: THAT'S GREAT. THAT HAD BEEN HELPFUL TO  
09:02:18 3 ME.

09:02:18 4 I'VE GOT NOTES EVERYWHERE, BUT I KNOW YOU'RE GOING TO WALK  
09:02:22 5 ME THROUGH IT. WE WILL JUST DO THEM IN THE ORDER THEY WERE  
09:02:25 6 BRIEFED.

09:02:25 7 MR. HOSIE, YOU WANT TO GET STARTED?

09:02:28 8 MR. HOSIE: BY MY RECKONING, YOUR HONOR, GIVEN THAT  
09:02:32 9 WE'VE SETTLED ON TWO, WE SHOULD BE STARTING WITH THE  
09:02:34 10 "SUBSTANTIALLY A RELATIVE DISTANCE" TERM, WHICH HAS BEEN  
09:02:38 11 CHALLENGED FOR INDEFINITENESS ON TWO --

09:02:43 12 THE COURT: NOT ON "ARE LAUNCHED IN A MANNER"?

09:02:45 13 MR. HOSIE: IT'S OUR "LAUNCHED IN A MANNER."

09:02:47 14 THE COURT: OKAY.

09:02:48 15 MR. HOSIE: THAT SEGUES INTO --

09:02:49 16 THE COURT: I'M SORRY, AND THEN IT GOES ON, "AND  
09:02:51 17 SUBSTANTIALLY."

09:02:52 18 GO AHEAD.

09:02:52 19 MR. HOSIE: SO IT'S REALLY PACKED INTO ONE MODULE, IF  
09:02:55 20 YOU WILL, IN THIS PRESENTATION.

09:03:06 21 YOUR HONOR, I HAVE PROVIDED THE COURT WITH A HARD COPY. I  
09:03:09 22 PROVIDED AN EXTRA COPY FOR THE REPORTER AND AN EXTRA COPY FOR  
09:03:13 23 THE CLERK, AND DEFENSE HAS COPIES AS WELL.

09:03:17 24 THE COURT: AND YOU ARE REFERRING TO THE BINDER OR --

09:03:19 25 MR. HOSIE: THE BINDER.

09:03:20 1 THE COURT: THE BINDER. OKAY.

09:03:22 2 MR. HOSIE: OURS ARE BOUND. AND IT WILL START WITH  
09:03:25 3 "SPENCER HOSIE PRESENTATION," THE FRONT PAGE. AND WE WILL  
09:03:25 4 START ORIGINALLY ENOUGH, WITH THE NEXT PAGE, GRAPHIC 1.

09:03:36 5 SO "SUBSTANTIALLY A RELATIVE DISTANCE", AND THIS INCLUDES  
09:03:40 6 THE "ARE LAUNCHED" ISSUES. HERE'S THE KEY LANGUAGE FROM THE  
09:03:43 7 KEY CLAIMS THAT "BALLOONS ARE LAUNCHED IN A MANNER SUCH THAT  
09:03:48 8 WHEN IN AN OPERATING RANGE OF 60,000 TO 140,000 FEET, THERE IS  
09:03:54 9 SUBSTANTIALLY A RELATIVE DISTANCE BETWEEN SAID PLURALITY OF  
09:03:57 10 LIGHTER-THAN-AIR BALLOONS."

09:04:00 11 GOOGLE SAYS THAT "SUBSTANTIALLY A RELATIVE DISTANCE" IS  
09:04:03 12 MEANINGLESS, THE WORDS ARE REDUNDANT, THERE ARE NO METES AND  
09:04:08 13 BOUNDS. THERE'S NO NOTICE, SAYS GOOGLE TO THE PRACTITIONER, IN  
09:04:13 14 THIS CLAIM, AS TO WHAT WOULD INFRINGE AND WHAT WOULD NOT.

09:04:16 15 SO THIS IS A CLASSIC TRADITIONAL INDEFINITENESS ATTACK.

09:04:20 16 TO INDEFINITENESS. "SUBSTANTIALLY A RELATIVE DISTANCE.  
09:04:24 17 TERMS THAT ARE INHERENTLY SUBJECTIVE, YOUR HONOR, SUCH AS  
09:04:28 18 "AESTHETICALLY PLEASING" ARE INDEFINITE. BECAUSE THAT'S IN THE  
09:04:31 19 EYE OF THE BEHOLDER. ONE MAN'S ROTHKO IS ANOTHER MAN'S UGLY  
09:04:36 20 WALLPAPER. SO "AESTHETICALLY PLEASING" IS AN EXAMPLE OF AN  
09:04:41 21 INDEFINITE TERM.

09:04:41 22 ANOTHER WOULD BE UNOBTRUSIVE. WHAT'S UNOBTRUSIVE TO ONE  
09:04:45 23 PERSON MIGHT BE THOROUGHLY OBTRUSIVE TO THE NEXT PERSON.

09:04:49 24 SO THERE ARE NO CONTOURS, NO METES AND BOUNDS IN THIS KIND  
09:04:54 25 OF AESTHETICALLY PLEASING OR UNOBTRUSIVE MANNER, AESTHETIC

09:04:57 1 SUBJECTIVE TERMS.

09:04:59 2 TO CONTRAST, THE COURTS HAVE CONSISTENTLY FOUND TERMS  
09:05:04 3 WHERE IT'S A MATTER OF DEGREE, AND WHERE THE DEGREE IS DEFINED  
09:05:08 4 BY THE OBJECTIVE OF THE INVENTION AS SERVED. FORM DRIVES  
09:05:17 5 FUNCTION.

09:05:17 6 SO, FOR EXAMPLE, "SUBSTANTIALLY ARRESTED" IN ADVANCED  
09:05:21 7 AEROSPACE, THAT WAS FOUND DEFINITE BECAUSE THE CONTEXT OF THE  
09:05:24 8 INVENTION. WHAT THE INVENTORS WERE TRYING TO ACCOMPLISH, THE  
09:05:27 9 PURPOSE AND FUNCTION, A PERSON OF ORDINARY SKILL IN THE ART  
09:05:30 10 COULD LOOK AT THAT AND SAY, OKAY, I KNOW WHAT THAT MEANS AND I  
09:05:33 11 KNOW HOW TO MAKE IT WORK, GIVEN THE OVERARCHING OBJECTIVE OF  
09:05:37 12 THIS INVENTION. FORM FOLLOWS FUNCTION.

09:05:43 13 NAUTILUS, SPACED RELATIONSHIP. IN NAUTILUS, AS THE COURT  
09:05:47 14 WILL RECALL, THERE WAS A STAIRMASTER AND THE HEARTBEATS AND THE  
09:05:50 15 LIKE, AND THE FINGERS HAD TO BE "SPACED RELATIONSHIP."

09:05:53 16 THE DEFENDANTS SAID, WELL, WHO KNOWS WHAT THAT MEANS, IS  
09:05:56 17 IT A FOOT, IS IT A MILLIMETER, IS IT A YARD? AND THE COURT  
09:06:00 18 SAID NO, BECAUSE THE OBJECTIVE WAS TO HAVE SOMEBODY STANDING ON  
09:06:02 19 TOP OF A STAIR MACHINE HOLDING ON TO THESE THINGS.

09:06:05 20 AND SO YOU KNOW PEOPLE'S HANDS ARE ABOUT THIS BIG, AND YOU  
09:06:08 21 KNOW THE FINGERS ARE ABOUT THIS FAR APART, AND SO YOU CAN  
09:06:11 22 UNDERSTAND WHAT THAT MEANS AND THE PURPOSE OF THE INVENTION.

09:06:15 23 ANOTHER EXAMPLE, "SUBSTANTIALLY OMNIDIRECTIONAL." THAT  
09:06:18 24 WAS THE ANTENNA CASE. THEY SAID LOOK, THE ANTENNA IS DESIGNED  
09:06:25 25 TO PROVIDE NETWORK COVERAGE, IT WILL DO WHAT IT CAN, AND THAT'S

09:06:28 1 WHAT OMNIDIRECTIONAL MEANS IN THE CONTEXT OF THE FUNCTION OF  
09:06:32 2 THE INVENTION. SO TO, VISUALLY NEGLIGIBLE.

09:06:35 3 THESE ARE FAIRLY RECENT EXAMPLES OF TERM THAT IS SOUND  
09:06:39 4 INDEFINITE BECAUSE THEY USE WORDS LIKE "SUBSTANTIALLY" AND  
09:06:41 5 "SPACING" OR "SUBSTANTIALLY ARRESTED." BUT IN THE CONTEXT OF  
09:06:46 6 THE PATENT, IN THE LARGER SCOPE OF WHAT THE OBJECTIVE WAS, THE  
09:06:51 7 COURT SAID THE PERSON SKILLED IN THE ART COULD KNOW WHAT THIS  
09:06:55 8 MEANS.

09:06:58 9 PURPOSE DEFINES SCOPE.

09:07:00 10 HERE IS A SHORT GRAPHIC WITH SOME OF THE LANGUAGE FROM THE  
09:07:05 11 '941 PATENT THAT DESCRIBES THE PURPOSE, THE STRUCTURE, THE  
09:07:13 12 NATURE OF THIS INVENTION.

09:07:14 13 THE SCOPE OF "SUBSTANTIALLY A RELATIVE DISTANCE" IS  
09:07:18 14 INFORMED BY THE OBJECTIVE OF THE INVENTION; MY POINT THUS FAR.

09:07:22 15 AND HERE'S LANGUAGE FROM '941, CLAIM ONE: "WHEREIN SAID  
09:07:26 16 FLEE FLOATING CONSTELLATION, COMMUNICATIONS SYSTEM PROVIDES A  
09:07:30 17 LINE-OF-SIGHT COVERAGE OF WIRELESS DATA TO A POPULATION ON A  
09:07:34 18 CONTIGUOUS LAND MASS."

09:07:36 19 THAT'S THE "WHY" OF IT. WHAT DO YOU WANT TO DO? YOU WANT  
09:07:38 20 TO FLOAT A BALLOON ARRAY SO THAT IT PROVIDES THE WIRELESS  
09:07:45 21 COVERAGE YOU WOULD WANT TO PROVIDE.

09:07:47 22 NOW, YOUR HONOR, THE ARRAY WILL DEPEND ON THE OBJECTIVE.  
09:07:50 23 IF I WANTED TO PROVIDE WIRELESS COVERAGE FOR SAN JOSE, IT MIGHT  
09:07:55 24 BE TWO BALLOONS. IF I WANTED TO PROVIDE WIRELESS COVERAGE FOR  
09:07:58 25 NORTHERN CALIFORNIA, IT MIGHT BE 200 BALLOONS.

09:08:01 1 SO YOU LOOK AT WHAT YOU WANT TO DO, AND THEN THE PERSON  
09:08:05 2 SKILLED IN THE ART WOULD SAY, HERE IS THE ARRAY THAT WILL FILL  
09:08:09 3 THAT FOOTPRINT THAT WILL MAKE THAT WORK. SO THE OBJECTIVE IS  
09:08:13 4 TO PROVIDE CONTIGUOUS WIRELESS COVERAGE.

09:08:21 5 THE COURT: SO THAT'S GOING TO HELP ME WITH "RELATIVE  
09:08:24 6 DISTANCE" BUT I'M NOT GETTING THE "SUBSTANTIALLY."

09:08:26 7 MR. HOSIE: AND I AM ABSOLUTELY GETTING THERE.

09:08:28 8 SO TO JUMP AHEAD TO THAT, YOUR HONOR, "RELATIVE" MEANS,  
09:08:30 9 OKAY, SO THE BALLOONS HAVE TO FIT IN AN ARRAY, AND THE  
09:08:34 10 CONFIGURATION OF THE ARRAY IS A FUNCTION OF THE SERVICE YOU  
09:08:36 11 WANT TO PROVIDE.

09:08:36 12 SO WHAT THEN DOES "SUBSTANTIALLY" ADD? GOOGLE SAYS,  
09:08:40 13 "SUBSTANTIALLY" SAYS "APPROXIMATELY OR APPROXIMATELY DISTANCE."  
09:08:44 14 THEY SAY THE WORDS ARE REDUNDANT. THEY ARE NOT.

09:08:47 15 "SUBSTANTIALLY" RECOGNIZES A DIFFERENT POINT. THESE ARE  
09:08:50 16 BALLOONS BOBBING AROUND IN THE WIND. YOU CANNOT CONTROL THEM  
09:08:53 17 WITH MATHEMATICAL PRECISION. YOU CAN'T SUPER GLUE THEM TO A  
09:08:59 18 POINT ON THE SIDE. THEY ARE GOING TO MOVE. AND THAT MEANS YOU  
09:09:01 19 WILL NOT BE ABLE TO HAVE PERFECT COVERAGE. YOU DO THE BEST YOU  
09:09:06 20 CAN GIVEN THE PRACTICAL --

09:09:09 21 THE COURT: WHERE'S THE SUPPORT FOR THAT IN THE SPEC,  
09:09:11 22 THOUGH?

09:09:12 23 MR. HOSIE: WELL, LOOK TO FIGURE 8. THIS IS SLIDE 9.

09:09:24 24 THIS IS FIGURE 8 FROM '941, AND IT SHOWS AN ARRAY OF MANY,  
09:09:31 25 MANY, BALLOONS. I'M SORRY, THIS IS FIGURE 8, SLIDE 9. AND YOU



09:09:36 1 CAN SEE THERE ARE COVERAGE GAPS HERE.

09:09:39 2 SO THIS IS- -- IT'S NOT PROVIDING PERFECT COVERAGE, IT'S  
09:09:48 3 NOT PROVIDING 100 PERCENT COVERAGE, IT'S PROVIDING SUBSTANTIAL  
09:09:53 4 COVERAGE AS THESE MOVE AROUND IN THE AIR, GIVEN THE WIND  
09:09:57 5 PATTERNS.

09:10:01 6 AND I WILL GO BACK ONE GRAPHIC TO PAGE 8. MORE SUPPORT IN  
09:10:06 7 THE SPECIFICATION. THESE ARE QUOTES WHERE THE DRAFTERS MADE  
09:10:14 8 CLEAR THAT THE GOAL IS TO PROVIDE "CONTINUOUS SUBSTANTIALLY  
09:10:18 9 COMPLETE COVERAGE OVER SAID CONTIGUOUS GEOGRAPHIC AREA."

09:10:25 10 THE COURT: SO I WOULD BE MORE COMFORTABLE WITH  
09:10:26 11 "SUBSTANTIALLY COMPLETE" THAN THIS LANGUAGE, "SUBSTANTIALLY A  
09:10:30 12 RELATIVE DISTANCE."

09:10:31 13 SO I THINK THE WORD "SUBSTANTIALLY," THERE I GET IT, YOU  
09:10:35 14 CAN'T GUARANTEE COVERAGE ALL THE TIME WITH THESE BALLOONS  
09:10:40 15 BOBBING AROUND. THERE MAY BE SOME FLOAT THAT CAUSES A GAP.  
09:10:44 16 BUT I DON'T KNOW HOW THAT INFORMS ME ON THE USE OF  
09:10:46 17 "SUBSTANTIALLY" IN OUR CLAIM TERM.

09:10:49 18 MR. HOSIE: WELL, THE IDEA IS EXACTLY AS THE COURT  
09:10:52 19 PUT IT, "SUBSTANTIALLY COMPLETE COVERAGE OF THE NETWORK ARRAY."

09:10:56 20 THE COURT: BUT THAT'S NOT WHAT I'M TRYING TO  
09:10:57 21 CONSTRUE.

09:10:58 22 MR. HOSIE: WELL, CONSTRUING THE WORD  
09:11:01 23 "SUBSTANTIALLY," AS USED IN THE OVERALL CLAIM.

09:11:04 24 THE COURT: I THINK I'M ACTUALLY CONSTRUING THE WORD  
09:11:08 25 "SUBSTANTIALLY" AS IT'S USED IN THIS -- IT'S NOT A CLAIM TERM,

09:11:12 1 BUT CLAIM PHRASE.

09:11:13 2 SO "SUBSTANTIALLY A RELATIVE DISTANCE," IS DIFFERENT THAN  
09:11:17 3 "SUBSTANTIALLY COMPLETE," IN MY VIEW. TELL ME WHY I'M WRONG.

09:11:22 4 MR. HOSIE: BECAUSE GIVEN THE DRAFTING, GIVEN THE  
09:11:24 5 CLAIMS, GIVEN THE FIGURES, THE WORD "SUBSTANTIALLY," AS YOU SEE  
09:11:30 6 IN PAGE 8, IS ALWAYS USED TO TALK ABOUT TRYING TO GET THE  
09:11:35 7 COVERAGE YOU WANT WITHOUT GUARANTEEING PERFECTION.

09:11:40 8 AND, IN FACT, IF THE COURT LOOKS AT EVERY TIME THE SPEC  
09:11:45 9 USES THE WORD SUBSTANTIALLY, THE COURT WILL SEE IT IS USED IN  
09:11:49 10 EXACTLY THAT FASHION. AND I HAVE TWO EXAMPLES ON PAGE 8.

09:11:53 11 THE COURT: OKAY.

09:11:53 12 MR. HOSIE: SUBSTANTIALLY COMPLETE.

09:11:56 13 SO THE ONLY TIME THE SPECIFICATION USES THE WORD  
09:11:59 14 "SUBSTANTIALLY," IS IN THIS PRECISE CONTEXT.

09:12:02 15 AND SO THE DRAFTER LOOKED AT THIS AND, YOU KNOW, WORDS ARE  
09:12:07 16 IMPERFECT CREATURES, YOU KNOW, THEY ARE INHERENTLY WITHOUT  
09:12:14 17 PERFECT FORM, FORMAT.

09:12:16 18 SO THE DRAFTER LOOKED AT THIS AND SAID "SUBSTANTIALLY A  
09:12:20 19 RELATIVE DISTANCE." "SUBSTANTIALLY," WE BELIEVE, GIVEN THE  
09:12:23 20 SPECIFICATION, MEANS, YOU KNOW, GIVEN, YOU DO THE BEST YOU CAN  
09:12:27 21 IN THE CIRCUMSTANCES. AND "RELATIVE DISTANCE" IS, OF COURSE,  
09:12:30 22 THE COVERAGE OBJECTIVE DRIVEN BY THE PURPOSE OF THE INVENTION.

09:12:39 23 I CAPTURE THIS GRAPHIC 11 PRECISELY BECAUSE I THOUGHT YOUR  
09:12:43 24 COURT WOULD GO TO THIS POINT SQUARELY. "SUBSTANTIALLY" DOES  
09:12:47 25 NOT EQUAL A RELATIVE DISTANCE. "SUBSTANTIALLY" EQUALS NEARLY

100 PERCENT, GIVEN THESE BALLOONS IN THE WIND. RELATIVE  
DISTANCE BALLOONS SPACED APART SUFFICIENTLY TO ACHIEVE THE  
OBJECTIVE.

THE COURT: WELL, I GUESS WE RUN INTO THE PROBLEM OF  
NEARLY A HUNDRED PERCENT IS FINE, BUT WHY CAN'T "SUBSTANTIALLY"  
BE JUST A LITTLE BIT MORE THAN 50 PERCENT OR 75 PERCENT.

I MEAN, IS THIS A TERM OF DEGREE, AND WHAT ARE WE HITTING  
AT HERE WITH "SUBSTANTIAL?"

MR. HOSIE: YES, I THINK "SUBSTANTIAL," ABSOLUTELY,  
IS A TERM OF DEGREE. I DON'T THINK IT WOULD BE FAIR TO SAY  
"SUBSTANTIALLY" IS 51 PERCENT.

THE COURT: BUT WHERE'S THE SUPPORT FOR THAT?

I MEAN, YOU AND I CAN DEBATE HOW "SUBSTANTIALLY" IS USED  
COMMONLY, BUT I DON'T THINK YOUR EXPERT GIVES ME ANY OPINION ON  
HOW A SKILLED ARTISAN WOULD INTERPRET "SUBSTANTIALLY."

I MEAN, IF COVERAGE IS 60 PERCENT, THAT'S SUBSTANTIAL. IF  
IT'S TWO-THIRDS, THAT'S SUBSTANTIAL. BUT DO WE MEAN  
97 PERCENT?

MR. HOSIE: THERE IS SUPPORT, YOUR HONOR.

AND I FIND FIGURE 8 PERSUASIVE ON THAT POINT BECAUSE IT  
SHOWS YOU WHAT SUBSTANTIALLY COVERAGE IS IN THAT INSTANCE.

THE COURT: WELL, BUT THEN YOU ARE GOING TO TELL ME  
THAT THIS ISN'T REALLY A LIMITATION FOR THE WHOLE PATENT, THIS  
IS JUST ONE EMBODIMENT.

MR. HOSIE: NO, THIS LANGUAGE APPEARS IN ALL THE

09:14:17 1 CLAIMS BEING CONSTRUED HERE. "SUBSTANTIALLY A RELATIVE  
09:14:21 2 DISTANCE." AND THIS PHRASE WAS ADDED BY THE SUPERVISING PATENT  
09:14:32 3 EXAMINER URBAN, IN AN INTERVIEW. IT WAS THE OFFICE'S LANGUAGE,  
09:14:34 4 NOT OUR LANGUAGE. AND THEN IT WAS APPROVED AND CALLED OUT  
09:14:37 5 SPECIFICALLY BY A SEPARATE EXAMINER, EXAMINER VO, IN THE NOTICE  
09:14:43 6 FOR REASONS.

09:14:43 7 SO THESE ARE PEOPLE WHO DO THIS FOR A LIVING.

09:14:46 8 THE COURT: SO, YOU KNOW, I HAVE GREAT RESPECT FOR  
09:14:48 9 THEIR KNOWLEDGE AND EXPERIENCE. THEY SEE MORE PATENT LANGUAGE  
09:14:51 10 THAN I COULD EVER SEE IN A LIFETIME, THEY PROBABLY SEE IN A  
09:14:55 11 YEAR.

09:14:56 12 HOWEVER, THE FEDERAL COURTS WOULD NOT HAVE ANY PATENT  
09:14:58 13 LITIGATION IF THEY GOT IT RIGHT ALL THE TIME.

09:15:01 14 MR. HOSIE: HUNDRED PERCENT, YOUR HONOR.

09:15:02 15 THE COURT: SO, YOU KNOW, THAT'S FINE, EXCEPT THE  
09:15:04 16 AMOUNT OF DEFERENCE I GIVE TO THE PATENT EXAMINER IS DEBATED IN  
09:15:07 17 THE CASE LAW. THERE ARE TIMES WHEN IT IS -- YOU KNOW, IT IS  
09:15:10 18 REASSURING TO THE COURT THAT MY VIEW COINCIDES WITH THE PATENT  
09:15:14 19 EXAMINER, BUT IT'S CERTAINLY NOT BINDING ON THE COURT, IT IS  
09:15:20 20 POTENTIALLY INSTRUCTIVE, BUT --

09:15:22 21 MR. HOSIE: IT'S EVIDENCE, YOUR HONOR.

09:15:23 22 THE COURT: IT'S EVIDENCE. YES, IT IS.

09:15:25 23 MR. HOSIE: IT'S EVIDENCE. IT'S NOT BINDING.

09:15:25 24 THE COURT: OKAY. THAT'S FAIR.

09:15:28 25 MR. HOSIE: AND ON GRAPHIC 12 NOW UP ON THE SCREEN,

09:15:30 1 WE HAVE CASES TALKING ABOUT THIS SPECIFICALLY, THE SONIX TECH  
09:15:36 2 CASE ON THE BOTTOM OF THIS GRAPHIC.

09:15:38 3 IT'S EVIDENCE. AND IT'S NOT JUST, THE FACT THAT THE  
09:15:42 4 OFFICE WROTE THE LANGUAGE, I THINK IS MATERIAL. THE FACT THAT  
09:15:47 5 IT WAS CALLED UP IN THE NOTICE OF ALLOWANCE, I THINK IS  
09:15:49 6 MATERIAL. THEY KNEW WHAT IT MEANT.

09:15:56 7 THE COURT: WELL, YOU KNOW, WHEN YOU SAY SOMETHING IS  
09:16:00 8 AESTHETICALLY PLEASING, YOU KNOW WHAT YOU MEAN AT THAT TIME  
09:16:04 9 TOO.

09:16:04 10 MR. HOSIE: WELL, BUT THE PROBLEM WITH SOMETHING LIKE  
09:16:06 11 "AESTHETICALLY PLEASING," IT IS INHERENTLY CAPABLE OF BEING  
09:16:10 12 REDUCED TO AN OBJECTIVE MEASURE. IT'S IMPOSSIBLE TO KNOW WHAT  
09:16:15 13 THAT MEANS.

09:16:16 14 BUT IN THE CONTEXT OF AN INVENTION WHERE THERE IS AN  
09:16:22 15 OBJECTIVE, A PURPOSE AND A FUNCTION, THEN YOU CAN SAY, OKAY,  
09:16:26 16 WHAT DOES THIS MEAN WHEN MAPPED AGAINST THAT PURPOSE, MEANS AND  
09:16:32 17 FUNCTION.

09:16:32 18 AND THERE ARE MANY, MANY CASES THAT DO THAT AND SAY, LOOK,  
09:16:35 19 YOU KNOW, IN THE CONTEXT OF THIS INVENTION, WE CAN FIGURE THIS  
09:16:38 20 OUT.

09:16:38 21 THE LEADING CASE, OF COURSE, IS NAUTILUS, A "SPACED  
09:16:42 22 RELATIONSHIP." THAT SOUNDS UNBOUNDED, IT COULD BE ANYTHING,  
09:16:46 23 BUT IN THE CONTEXT OF THE STAIR MACHINE, PEOPLE KNEW WHAT THAT  
09:16:49 24 MEANT, AT LEAST TO THE DEGREE REQUIRED.

09:16:53 25 AND LET ME TALK ABOUT THAT AS WELL. THIS IS NOT AN

IMMUTABLE AND INFLEXIBLE STANDARD, YOUR HONOR.

THE COURT: NO.

MR. HOSIE: THE PATENTEE HAS AN OBLIGATION TO GET IT AS CORRECT AS POSSIBLE, SUBJECT TO THE PRACTICAL REALITIES OF THE SPACE IN WHICH THE INVENTION RESIDES.

SO IF YOU'RE DEALING WITH BALLOONS THAT ARE INHERENTLY IN AN IMPRECISE ARRAY, AND MOVING AND BOBBING AROUND, YOU NEED WORDS THAT SAY, "SUBSTANTIALLY" OR "APPROXIMATELY" OR "AS CLOSE AS YOU CAN," DO THE BEST THAT YOU CAN. BECAUSE IF YOU DON'T HAVE THOSE QUALIFIERS, IF YOU DON'T HAVE THOSE MODIFIERS, GOOGLE WOULD BE SAYING, LOOK, IT'S NOT EXACTLY PERFECTLY MATHEMATICALLY PRECISE, IT DOESN'T INFRINGE.

THESE PATENTS IN A SPACE LIKE THIS, INHERENTLY HAVE THESE QUALIFIERS AND MODIFIERS SUCH AS "SUBSTANTIALLY." AND THERE ARE MANY CASES THAT DO THAT.

THE COURT: OKAY.

OKAY. YOU REFER TO THE ORIGINAL APPLICATION FOR THE '941. IS IT OF ANY USE TO ME TO ACTUALLY SEE THAT INFORMATION FROM THE FILE WRAPPER? THE APPLICATION FOR, I GUESS IT WAS THE APPLICATION FOR 440. YOU QUOTE IT. I DON'T THINK YOU GAVE IT TO ME. IS THAT GOING TO HELP ME TO SEE MORE OF IT?

MR. HOSIE: WE DO QUOTE IT ON THE TOP OF PAGE 12. IT IS ON ECF. AND I UNDERSTAND AN ECF CITE IS NOT HELPFUL TO THIS COURT BECAUSE WE CAN'T EXPECT THE COURT TO GO THROUGH AND FISH THIS OUT.

09:18:26 1 I THINK THE SHORT ANSWER IS YES, IT MIGHT BE HELPFUL.

09:18:29 2 THE COURT: OKAY. WELL, THEN MAYBE YOU COULD PROVIDE  
09:18:32 3 THAT TO ME JUST SO THAT WE WOULD HAVE IT. THAT WOULD BE GREAT.

09:18:36 4 OKAY. ARE YOU GOING TO GO ON TO THE NEXT ISSUE OF THE  
09:18:39 5 MIXED SYSTEM METHOD CLAIM?

09:18:40 6 MR. HOSIE: I AM, INDEED, IF IT MAKES SENSE.

09:18:44 7 THE COURT: IT DOES.

09:18:44 8 MR. HOSIE: THIS IS ALL OF A PIECE, REALLY.

09:18:46 9 SO THE NEXT GOOGLE CHALLENGE IS THE POINT THAT GOOGLE  
09:18:52 10 BELIEVES THE PHRASE, "ARE LAUNCHED IN A MANNER," INJECTS A  
09:18:57 11 METHOD STEP, THAT YOU SHALL AND MUST DO X IN A SYSTEM CLAIM.  
09:19:05 12 AND IF ONE MIXES A METHOD STEP WITH A SYSTEM CLAIM, OF COURSE  
09:19:12 13 THE OVERALL CLAIM IS INDEFINITE. THAT'S GOOGLE'S ARGUMENT.

09:19:16 14 THE COURT: WELL, IT IS THE LAW.

09:19:17 15 MR. HOSIE: IT IS, INDEED, THE LAW. WE HAVE NO  
09:19:19 16 QUARREL WITH THE LAW.

09:19:21 17 THE REAL QUESTION IS, AS IS ALWAYS TRUE IN THESE CASES,  
09:19:24 18 WHAT DOES IT MEAN AS APPLIED HERE? THAT'S THE ART IN THESE  
09:19:27 19 PATENT DISPUTES IS, OKAY, WE UNDERSTAND THE RULES, AND THE  
09:19:30 20 RULES ARE QUITE OFTEN EASILY PUT, BUT APPLYING THEM IS PUTTING  
09:19:35 21 COTTAGE CHEESE THROUGH A CHEESE GRATER, IT IS A MESSY AND  
09:19:38 22 DIFFICULT PROCESS, OFTEN ENOUGH.

09:19:40 23 SO "SYSTEM CAPABILITY" OR "USER ACTION" THIS IS CASE LAW,  
09:19:49 24 YOUR HONOR, THAT SAYS IF THE LANGUAGE CAN BE READ TO DENOTE  
09:19:52 25 SYSTEM CAPABILITY, IT SHOULD BE SO READ, AS OPPOSED TO A METHOD

09:20:01 1 STEP.

09:20:01 2 AND THE BEST CASE ON THIS IS THE BOSTON SCIENTIFIC CASE,  
09:20:09 3 WHICH WE BRIEFED AT LENGTH.

09:20:11 4 THE COURT: YES.

09:20:11 5 MR. HOSIE: AND IT'S REALLY, REALLY CLOSE.

09:20:13 6 IN THAT CASE THE LANGUAGE IN THE CLAIM SAID, THE SENTENCE,  
09:20:17 7 AND I QUOTE, "ARE SELECTED TO FACILITATE A PLACEMENT."

09:20:22 8 THE LANGUAGE IN OUR CASE IS, THE BALLOONS, AND I QUOTE,  
09:20:27 9 "ARE LAUNCHED IN A MANNER SUCH THAT."

09:20:34 10 "ARE SELECTED," "ARE LAUNCHED." THE BOSTON SCIENTIFIC  
09:20:38 11 CASE LOOKED AT IT AND SAID LOOK, IN THE CONTEXT OF THIS  
09:20:40 12 INVENTION, THIS SYSTEM CLAIM, THIS LANGUAGE SHOULD BE READ AS  
09:20:44 13 SYSTEM CAPABILITY.

09:20:48 14 TO PUT IT IN THE LANGUAGE OF OUR CASE, THE BALLOON SYSTEM  
09:20:53 15 HAS TO HAVE THE CAPABILITY OF LAUNCHING THE BALLOONS IN A  
09:20:57 16 MANNER THAT DOES X, Y OR Z. IT IS A CAPABILITY STEP. IT'S NOT  
09:21:03 17 ABOUT THE END USER GETTING NETWORK DATA ON A CELL PHONE. THIS  
09:21:11 18 IS ABOUT THE CREATION OF THE BALLOON NETWORK. IT'S THE  
09:21:17 19 MANUFACTURE OF THE BALLOON NETWORK. JUST LIKE IT WAS THE  
09:21:20 20 MANUFACTURE OF THE STINTS IN BOSTON SCIENTIFIC. AND THIS  
09:21:26 21 LANGUAGE CAN, AND PROPERLY, UNDER THE CASE LAW, SHOULD BE READ  
09:21:30 22 AS DENOTING A SYSTEM CAPABILITY.

09:21:32 23 LOOK, THIS SYSTEM HAS THE CAPABILITY OF LAUNCHING BALLOONS  
09:21:37 24 IN A MANNER THAT ACCOMPLISHES THIS OBJECTIVE.

09:21:45 25 AGAIN, WE'VE TALKED ABOUT THIS, THIS LANGUAGE CAME FROM



09:21:48 1 THE OFFICE. I DON'T THINK IT'S FAIR TO SAY THAT THEY WOULD  
09:21:53 2 CAVALIERLY INTRODUCE A METHOD STEP IN WHAT WAS CLEARLY  
09:21:58 3 UNDERSTOOD BY ALL TO BE A SYSTEM CLAIM. NOT BINDING,  
09:22:01 4 YOUR HONOR, JUST EVIDENCE. BUT THIS IS ALL ABOUT EVIDENCE.

09:22:05 5 AND SO IN TERMS OF THE CASES, AND WE CITE THEM IN OUR  
09:22:09 6 BRIEF, IF THE LANGUAGE CAN BE READ TO COVER TO DENOTE SYSTEM  
09:22:12 7 CAPABILITY, IT SHOULD BE SO READ. THIS LANGUAGE CAN BE READ.

09:22:17 8 I THINK GOOGLE'S ARGUMENTS ABOUT THE END USER, OBFUSCATE  
09:22:22 9 MORE THAN CLARIFY, BECAUSE THIS ISN'T ABOUT THE GUY ON THE  
09:22:25 10 GROUND GETTING A CELL PHONE SIGNAL IN NAIROBI, IT'S ABOUT  
09:22:31 11 SOMEBODY BUILDING A BALLOON ARRAY THAT PROVIDES NETWORK  
09:22:34 12 COVERAGE. AND AS PART OF THAT, THAT SYSTEM, PART OF THAT  
09:22:38 13 MANUFACTURE OF THE BALLOON ARRAY, THE SYSTEM HAS TO HAVE THE  
09:22:43 14 CAPABILITY OF BEING LAUNCHED IN A MANNER.

09:22:45 15 THIS IS NO DIFFERENT THAN THE EIGHT, TEN, DOZEN CASES WE  
09:22:48 16 CITE IN OUR BRIEFS THAT READ VERY SIMILAR LANGUAGE, LIKE  
09:22:53 17 BOSTON SCIENTIFIC, AND REACH THAT CONCLUSION EXACTLY.

09:22:56 18 SO THAT IS OUR REBUTTAL ON MIXED SYSTEM-METHODS CLAIM.

09:22:59 19 THE COURT: ALL RIGHT.

09:23:00 20 MR. HOSIE: WOULD YOU LIKE ME TO TENDER THE PODIUM  
09:23:02 21 FOR THOSE?

09:23:02 22 THE COURT: I THINK -- LET'S -- THIS ONE ESPECIALLY  
09:23:05 23 ENGENDERED THE MOST INK BY THE PARTIES, SO I CERTAINLY WANT TO  
09:23:08 24 STAY FOCUSED ON THIS. IF WE RUN SHORT ON TIME, WE WILL START  
09:23:12 25 COMBINING SOME OF THEM.

09:23:13 1 MR. HOSIE: THANK YOU, YOUR HONOR.

09:23:14 2 THE COURT: MR. VAN NEST.

09:23:15 3 MR. VAN NEST: GOOD MORNING, YOUR HONOR.

09:23:17 4 THANK YOU FOR MAKING TIME FOR US TODAY IN THIS NICE BIG  
09:23:21 5 COURTROOM. I WANT TO STEP BACK AND JUST PROVIDE SOME CONTEXT.

09:23:26 6 IF I COULD HAVE OUR FIRST SLIDE WITH THE CLAIM ON IT,  
09:23:29 7 PLEASE.

09:23:30 8 YOU HAD A GOOD TUTORIAL LAST WEEK. YOU SAW THAT THIS IS A  
09:23:34 9 FIELD THAT IS VERY CROWDED WITH PRIOR ART. SPACE DATA DIDN'T  
09:23:38 10 INVENT BALLOONS, THEY DIDN'T INVENT USING BALLOONS FOR  
09:23:41 11 COMMUNICATION NETWORKS, THEY DIDN'T INVENT USING BALLOONS TO  
09:23:44 12 HAND OFF COMMUNICATION.

09:23:48 13 WHAT '941, CLAIM ONE, IS DIRECTED TO IS A FREE FLOATING  
09:23:53 14 CONSTELLATION OF BALLOONS WITH COMMUNICATION SYSTEMS ON BOARD,  
09:24:00 15 SOME GROUND COMMUNICATION SYSTEMS, THAT CAN COMMUNICATE WITH  
09:24:03 16 THE BALLOONS. THE ABILITY TO HAND OFF FROM THE GROUND, THE  
09:24:08 17 COMMUNICATION FROM ONE BALLOON TO ANOTHER, TO PROVIDE, AS  
09:24:13 18 MR. HOSIE SAID, LINE OF SIGHT CELLULAR COMMUNICATION.

09:24:18 19 AND ACCORDING TO THE CLAIM, AS WE HAVE IT HERE, THESE ARE  
09:24:26 20 LAUNCHED IN A MANNER, NOT JUST LAUNCHED, BUT LAUNCHED IN A  
09:24:30 21 MANNER, IT'S A PARTICULAR MANNER, TO ACHIEVE THE CONSTELLATION.

09:24:37 22 SO I THINK IT'S VERY, VERY IMPORTANT TO HAVE IN MIND, TO  
09:24:44 23 HAVE THAT LAST PHRASE.

09:24:48 24 LET'S GO IN THE NEXT SLIDE.

09:24:50 25 THERE ARE TWO ISSUES, THE FIRST ISSUE IS THE NAUTILUS

09:24:52 1 ISSUE YOU, AND MR. HOSIE DISCUSSED THIS INITIALLY.

09:24:54 2 THE PROBLEM IS BECAUSE THIS PHRASE WAS ADDED LATE, IT'S  
09:24:57 3 NOT DISCUSSED IN THE SPEC, IT'S NOT DEFINED ANYWHERE, BOTH  
09:25:01 4 EXPERTS AGREE IT'S NOT A TERM OF ART. IT'S KIND OF NONSENSICAL  
09:25:05 5 ON ITS FACE, AS YOU'VE ALREADY OBSERVED.

09:25:09 6 BUT THE MAIN PROBLEM WITH IT IS, IT DOESN'T DEFINE THE  
09:25:12 7 BOUNDARIES OF THE DARN INVENTION. WHAT IS SUBSTANTIALLY? IS  
09:25:17 8 IT 50 PERCENT, 60 PERCENT, 80 PERCENT? AND WHAT IS A RELATIVE  
09:25:21 9 DISTANCE?

09:25:22 10 BOTH OF THOSE QUESTIONS, DISTANCE AND COVERAGE, ARE LEFT  
09:25:25 11 OPEN BOTH BY THE LANGUAGE OF THE CLAIM, AS WE HAVE IT, AND  
09:25:31 12 THEIR PROPOSED CHANGE, "SUITABLE MIX OF INTER-PLATFORM  
09:25:35 13 DISTANCES," THAT DOESN'T MAKE IT ANY BETTER, PROBABLY MAKE ITS  
09:25:39 14 WORSE. SLIDE 3.

09:25:42 15 SO I WANT TO START WITH THE NAUTILUS POINT, BECAUSE I  
09:25:45 16 THINK THAT'S THE ONE THAT WE SHOULD SPEND THE MOST TIME ON. IF  
09:25:48 17 I COULD GO TO THE NEXT SLIDE.

09:25:49 18 THE COURT: I THINK THAT'S YOUR STRONGEST POINT,  
09:25:52 19 YEAH.

09:25:52 20 MR. VAN NEST: I THINK IT IS TOO.

09:25:56 21 NAUTILUS MAKES CLEAR THAT THE GOAL OF THIS IS TO PROVIDE  
09:26:00 22 SOME KIND OF OBJECTIVE BOUNDARY TO LIMIT THE CLAIM.

09:26:03 23 THAT'S PARTICULARLY IMPORTANT, YOUR HONOR, IN LIGHT OF ALL  
09:26:05 24 THE PRIOR ART THAT WE'VE GOT. BECAUSE THEY DON'T HAVE THE  
09:26:08 25 RIGHT TO CLAIM THE WHOLE FIELD, AND I THINK INTERVAL LICENSING,

09:26:15 1 THAT'S THE ONE THAT TALKED ABOUT UNOBTRUSIVE, I THINK THE  
09:26:19 2 CLAIMS, WHEN READ IN LIGHT OF THE SPEC, HAVE TO PROVIDE  
09:26:22 3 OBJECTIVE BOUNDARIES FOR THOSE OF SKILL IN THE ART.

09:26:25 4 NOW, HERE, AS I SAID, WE DON'T HAVE ANY DISCUSSION IN THE  
09:26:29 5 SPECIFICATION ABOUT WHAT "SUBSTANTIALLY A RELATIVE DISTANCE"  
09:26:33 6 MEANS. WE HAVE SOME DISCUSSION ABOUT BALLOONS AND RADIUSSES,  
09:26:37 7 BUT WE DON'T HAVE ANY DEFINITION ABOUT DISTANCE. WE HAVE THE  
09:26:41 8 DISCUSSION OF COVERAGE, BUT EVEN THE PATENT RECOGNIZES COVERAGE  
09:26:44 9 WILL NEVER BE COMPLETE.

09:26:46 10 SO AGAIN, WHAT IS SUBSTANTIAL? THERE'S A LOT OF WAYS TO  
09:26:50 11 DESIGN THESE SYSTEMS TO PROVIDE MORE OR LESS COVERAGE WITH MORE  
09:26:55 12 OR FEWER BALLOONS.

09:26:57 13 AS YOU SAW LAST WEEK, THERE ARE MANY DIFFERENT WAYS TO  
09:27:00 14 DESIGN IT. AND I'VE CREATED THIS GRAPHIC ON MY NEXT SLIDE  
09:27:04 15 WHICH KIND OF ILLUSTRATES THE PROBLEMS.

09:27:06 16 IF WE COULD POP THE FIRST ONE UP.

09:27:08 17 WHAT DISTANCE IS BEING MEASURED? ARE WE MEASURING SOME  
09:27:12 18 DISTANCE BETWEEN ONE END OR THE OTHER OF THE CONSTELLATION, OR  
09:27:15 19 ARE WE ONLY MEASURING THE DISTANCE BETWEEN THE BALLOONS?  
09:27:18 20 BECAUSE THAT MAKES A BIG DIFFERENCE IN THE SIZE OF  
09:27:21 21 CONSTELLATION THAT YOU WANT TO PROVIDE. THAT'S ONE OF THE  
09:27:24 22 ISSUES.

09:27:26 23 IF YOU'RE MEASURING THE DISTANCE BETWEEN BALLOONS OR  
09:27:31 24 YOU'RE MEASURING THE OVERALL DISTANCE, IS THERE ANY DISTANCE  
09:27:34 25 BETWEEN BALLOONS THAT FALLS OUTSIDE THE SCOPE OF THE CLAIM?

09:27:38 1 IN OTHER WORDS, COULD WE DESIGN AROUND, WHICH WE WOULD  
09:27:40 2 HAVE THE RIGHT TO DO, EVEN IF WE WERE INFRINGING. IS THERE A  
09:27:44 3 DISTANCE BETWEEN BALLOONS THAT EITHER A DISTANCE AT WHICH THEY  
09:27:50 4 ARE CLOSER THAN THEY WOULD NEED TO BE, AND THEREFORE OVERLAP,  
09:27:54 5 OR FURTHER AWAY? IS THERE A DISTANCE THAT FALLS OUTSIDE THE  
09:27:59 6 CLAIMS? YOU HAVE NO WAY OF KNOWING THAT WITH EITHER OF THE  
09:28:02 7 PROPOSALS, EITHER THE LANGUAGE OF THE CLAIM OR THEIR PROPOSAL.

09:28:06 8 THE THIRD ONE YOU'VE ALREADY TOUCHED ON, WHAT DOES  
09:28:09 9 "SUBSTANTIALLY" MEAN?

09:28:10 10 LET'S POP THE NEXT ONE UP.

09:28:12 11 CAN WE HAVE GAPS IN COVERAGE TO AVOID INFRINGEMENT? IN  
09:28:15 12 OTHER WORDS, YOU COULD THEORETICALLY PUT SO MANY BALLOONS UP  
09:28:19 13 THAT EVERYBODY WOULD GET PERFECT SERVICE, EVEN IN A WINDY AREA.  
09:28:23 14 THAT'S NOT USUALLY COST-EFFECTIVE.

09:28:26 15 THE COURT: RIGHT.

09:28:26 16 MR. VAN NEST: SO HOW MUCH COVERAGE IS NEEDED TO  
09:28:30 17 INFRINGE IF THE RULE IS SUBSTANTIAL? AND YOU CAN SAY  
09:28:34 18 "SUBSTANTIALLY COMPLETE," BUT WHAT DOES THAT MEAN? WE'VE ALL  
09:28:37 19 BEEN THROUGH JURY TRIALS WHERE WE LEAVE THAT ISSUE TO THE END,  
09:28:40 20 AND WHAT HAPPENS? IT'S A MESS, BECAUSE THERE IS NO DEFINITION,  
09:28:46 21 YOU START GETTING JURY QUESTIONS.

09:28:47 22 THE LAST ONE I GOT UP IS WHAT IF SOME BALLOONS ARE CLOSE  
09:28:51 23 TOGETHER AND OTHERS FURTHER APART? HOW UNIFORM DO THE  
09:28:56 24 DISTANCES BETWEEN THE BALLOONS HAVE TO BE?

09:28:59 25 AGAIN, YOU COULD DESIGN A SYSTEM WHERE THEY ARE CLUSTERED

09:29:03 1 IN THE MIDDLE OF A GEOGRAPHIC AREA AND A LITTLE MORE FURTHER  
09:29:06 2 APART FURTHER OUTSIDE. WOULD THAT INFRINGE, OR NOT? THERE'S  
09:29:10 3 REALLY NO WAY OF KNOWING THAT.

09:29:12 4 AND REMARKABLY, WHEN WE ASKED THEIR EXPERT ABOUT THIS,  
09:29:15 5 BECAUSE THERE ARE EXPERTS ON BOTH SIDES, THIS IS WHAT HE SAID  
09:29:18 6 WITH RESPECT TO "SUBSTANTIALLY."

09:29:20 7 "I MEAN, THERE IS AT LEAST -- THERE IS A STARTING POINT, A  
09:29:23 8 RELATIVE DISTANCE THAT'S KIND OF A VERY LOOSE OBJECTIVE, BUT  
09:29:27 9 THAT OBJECTIVE -- IF THERE'S ONE DISTANCE OR MULTIPLE  
09:29:32 10 DISTANCES, THAT OBJECTIVE DOES NOT NEED TO BE MET PRECISELY.  
09:29:35 11 THERE'S WIGGLE ROOM."

09:29:38 12 I MEAN, THAT ADMISSION IS THE OPPOSITE OF NAUTILUS AND  
09:29:40 13 INTERVAL LICENSING. WIGGLE ROOM, LOOSE OBJECTIVE, YOU CAN'T  
09:29:47 14 DEFINE YOUR PATENT BASED ON THE GOAL, YOU'VE GOT TO DEFINE YOUR  
09:29:51 15 PATENT BASED ON HOW YOU GET THERE, AND TELL PEOPLE WHAT IS THE  
09:29:55 16 MEANS BY WHICH YOU ARE DOING IT.

09:29:57 17 CAN I HAVE THE NEXT SLIDE.

09:29:59 18 BASED ON THIS ANALYSIS BY THEIR EXPERT, HE SAYS BOTH OF  
09:30:04 19 THESE VERSIONS INFRINGE. HE SAYS, LAUNCHING IN A MANNER FROM  
09:30:10 20 CALIFORNIA, SAN JOSE, WHERE YOU'VE GROUPED THEM TOGETHER, THAT  
09:30:14 21 INFRINGES. BUT IF YOU LAUNCH ONE BALLOON IN FLORIDA AND ONE  
09:30:20 22 HERE, THAT CAN INFRINGE TOO.

09:30:22 23 NOW, HOW IN THE WORLD THAT COULD PROVIDE NOTICE TO  
09:30:26 24 SOMEBODY OF THE KIND OF CONSTELLATION THAT WOULD INFRINGE AND  
09:30:31 25 WOULDN'T INFRINGE IS ABSOLUTE --

09:30:34 1 THE COURT: YOU KNOW, I'M NOT REALLY GETTING WHY THE  
09:30:36 2 LAUNCH SITE GETS DRAWN INTO THIS. I THOUGHT IT WAS THE  
09:30:41 3 ULTIMATE PLACEMENT OF THE BALLOON IN THE STRATOSPHERE THAT WE  
09:30:45 4 ARE TALKING ABOUT.

09:30:46 5 MR. VAN NEST: WE WILL TALK ABOUT THIS LATER, NOT  
09:30:48 6 TODAY, BUT THEY MAKE A BIG DEAL OUT OF THE IMPORTANCE OF HOW  
09:30:52 7 YOU LAUNCH. LAUNCH IN A MANNER TO CREATE THIS.

09:30:57 8 THE COURT: SO "LAUNCH IN A MANNER," I UNDERSTAND  
09:31:00 9 THAT, BUT THE MECHANISM OF LAUNCHING IS DIFFERENT THAN THE  
09:31:03 10 LOCATION OF LAUNCHING.

09:31:04 11 YOU ARE TRYING TO SAY IT'S ALL PART OF THE --

09:31:06 12 MR. VAN NEST: WELL, NO, THE PART OF IT THAT THEY  
09:31:09 13 THINK IS IMPORTANT IS THAT YOU LAUNCH THEM TOGETHER FROM ONE  
09:31:11 14 PLACE, AND THAT'S HOW THEY STAY TOGETHER.

09:31:13 15 THE COURT: I DIDN'T PICK THAT UP IN THIS DISCUSSION.

09:31:16 16 MR. VAN NEST: THAT'S, IN FACT, HOW SPACE DATA  
09:31:18 17 OPERATES, AS OPPOSED TO USING MORE STEERING AND STUFF TO DO IT.  
09:31:24 18 THEY SPACE APART -- LET ME CORRECT MYSELF -- THEY SPACE APART  
09:31:28 19 THE LAUNCHING TO TRY TO EMULATE WHAT THIS CONSTELLATION WILL  
09:31:32 20 BE.

09:31:32 21 THE COURT: RIGHT.

09:31:32 22 MR. VAN NEST: RATHER THAN LAUNCH THEM ALL IN ONE  
09:31:35 23 PLACE AND STEER THEM TO THE CONSTELLATION.

09:31:37 24 THE COURT: I WASN'T AWARE, MAYBE I JUST WASN'T  
09:31:40 25 FOCUSED ON IT, THAT THIS PATENT LIMITS TO ONE LAUNCH SITE, ONE

09:31:45 1 LAUNCH SITE FOR A GIVEN CONSTELLATION.

09:31:49 2 MR. VAN NEST: THIS LIMITATION DOESN'T HAVE AN  
09:31:51 3 EXPLICIT DISCUSSION OF THAT.

09:31:52 4 THE COURT: THAT'S WHAT I THOUGHT.

09:31:53 5 MR. VAN NEST: THIS CLAIM, IT DOESN'T. BUT THAT'S  
09:31:56 6 WHAT "LAUNCHED IN A MANNER" IS REFERRING TO IN THE CLAIM. THEY  
09:31:59 7 ARE SPACING APART THEIR LAUNCH SITES IN ORDER TO GET THE  
09:32:03 8 CONSTELLATION, AS OPPOSED TO RELYING ON NAVIGATION TO DO IT.

09:32:08 9 BUT THAT'S NOT FOR TODAY. MY POINT IS THAT IF YOU DON'T  
09:32:12 10 HAVE A DEFINITION, AN OBJECTIVE DEFINITION OF WHAT -- HOW MUCH  
09:32:18 11 COVERAGE YOU NEED, AND YOU DON'T HAVE AN OBJECTIVE DEFINITION  
09:32:21 12 OF WHAT THE DISTANCES BETWEEN BALLOONS ARE, YOU DON'T HAVE ANY  
09:32:25 13 WAY OF KNOWING WHAT DOES OR DOESN'T INFRINGE, AS THIS EXAMPLE  
09:32:31 14 ILLUSTRATES.

09:32:31 15 THE COURT: WHEN WE SAY -- WELL, WE ARE NOT TALKING  
09:32:39 16 ABOUT SUBSTANTIAL COVERAGE HERE, WE ARE TALKING ABOUT  
09:32:41 17 "SUBSTANTIALLY A RELATIVE DISTANCE." AND I'M CONCERNED ABOUT  
09:32:48 18 INTERCHANGING THE TWO.

09:32:49 19 ARE YOU SAYING THAT I SHOULD? THAT "SUBSTANTIALLY A  
09:32:52 20 RELATIVE DISTANCE" IS THE SAME AS "SUBSTANTIAL COVERAGE?"

09:32:56 21 MR. VAN NEST: I THINK THAT'S WHAT SPACE DATA IS  
09:32:57 22 SAYING "SUBSTANTIALLY" REFERS TO.

09:33:00 23 THE COURT: ARE YOU SAYING THAT?

09:33:01 24 MR. VAN NEST: I DON'T KNOW WHAT ELSE IT COULD REFER  
09:33:02 25 TO.



09:33:02 1 THE COURT: OKAY.

09:33:03 2 BECAUSE "SUBSTANTIAL COVERAGE," THAT'S EASIER TO  
09:33:05 3 UNDERSTAND. "SUBSTANTIAL COVERAGE" IS A TRICKY ISSUE TOO  
09:33:09 4 BECAUSE I DON'T KNOW WHETHER IT MEANS THE NUMBER OF CUSTOMERS  
09:33:13 5 IS THE MEASURE OR THE GEOGRAPHIC LOCALE.

09:33:20 6 IF YOU ARE IN WYOMING, YOU CAN HAVE THOUSANDS OF MILES AND  
09:33:27 7 TENS OF PEOPLE. AND IF YOU ARE IN NEW YORK CITY, YOU WILL HAVE  
09:33:30 8 MILLIONS OF PEOPLE AND TENS OF FEET. SO I DON'T EVEN KNOW WHAT  
09:33:34 9 OUR MEASUREMENT IS IF WE ARE TALKING ABOUT "SUBSTANTIAL  
09:33:37 10 COVERAGE."

09:33:37 11 MR. VAN NEST: I DON'T EITHER. AND THAT'S THE  
09:33:39 12 PROBLEM. IF DR. HANSMAN LOOKED AT THIS ISSUE, AND HERE'S WHAT  
09:33:44 13 HE SAID, PULLEN HAS SAID, PULLEN IS THE SPACE DATA EXPERT, THAT  
09:33:49 14 COVERAGE NEED NOT BE A HUNDRED PERCENT.

09:33:51 15 WELL, THERE'S NO OBJECTIVE WAY TO DETERMINE WHAT EXTENT OF  
09:33:54 16 COVERAGE MEETS THE CLAIMS.

09:33:55 17 YOU ARE POINTING OUT A DIFFERENT PROBLEM, WHICH IS, WHAT  
09:33:58 18 ARE WE MEASURING? ARE WE MEASURING THE NUMBER OF CUSTOMERS  
09:34:01 19 THAT GET COVERAGE, OR THE REGIONS ON THE GROUND FROM WHICH YOU  
09:34:04 20 CAN GET COVERAGE, OR WHAT?

09:34:06 21 BUT DR. PULLEN IS SAYING, THERE'S NO WAY TO DETERMINE THAT  
09:34:10 22 BY LOOKING AT THE SPECIFICATION.

09:34:13 23 SO IF "SUBSTANTIALLY" MEANS "SUBSTANTIALLY COVERED" OR  
09:34:15 24 "NEARLY COMPLETE" OR "SUBSTANTIALLY COMPLETE," YOU DON'T KNOW  
09:34:19 25 WHAT THAT MEANS, AND THERE'S NO WAY TO DETERMINE IT FROM THE

PATENTS THEMSELVES.

AND I THINK, AGAIN, THAT'S CRITICAL, BECAUSE OF ALL THE PRIOR ART THAT'S OUT THERE. YOU CAN'T SIMPLY SAY, IT'S GOOD ENOUGH IF IT WORKS, RIGHT. IT INFRINGES IF IT WORKS.

THAT'S ESSENTIALLY WHAT THEY WANT TO SAY WITH WORDS LIKE "SUITABLE," AND THE CLAIM LANGUAGE ITSELF. THAT'S THE CLASSIC CASE OF INDEFINITENESS UNDER NAUTILUS.

YOU CAN'T COME IN AND SAY IF IT WORKS, THEREFORE IT INFRINGES. YOU HAVE TO HAVE SOME WAY OF ALLOWING PEOPLE TO KNOW HOW TO DESIGN AROUND YOUR PATENT, AMONG OTHER THINGS.

LET'S GO BACK TO THE SLIDE.

THIS IS JUST THE POINT I WAS MAKING ABOUT THE TIMELINE YOU SAW LAST WEEK. BALLOONS PROVIDING COMMUNICATION HAVE BEEN AROUND IN THE 60'S WITH STROM AND THE 70'S WITH CARTEN. THERE ARE LOTS AND LOTS OF EXAMPLES OF THIS. THAT'S WHY THEY DIDN'T INVENT THIS CONCEPT. THEY INVENTED, IF ANYTHING, A WAY OF PERFORMING IT.

LET'S GO FORWARD.

THERE'S ONE OTHER PROBLEM, I THINK -- THE NEXT SLIDE. THERE'S ONE OTHER PROBLEM THAT DR. HANSMAN POINTS OUT, AND THAT IS YOU ALSO DON'T KNOW, WITH RESPECT TO DISTANCE, HOW CLOSE THESE COULD BE, RIGHT. IF THEY ARE CLOSER TOGETHER, THAT'S OVERLAP. THAT'S THE OPPOSITE OF GAPS IN COVERAGE. ONE COULD DESIGN A SYSTEM, WHICH IS LESS EFFICIENT PROBABLY, BUT WHERE THE BALLOONS ARE CLOSER TOGETHER.

09:35:47 1 BUT AGAIN, BECAUSE WE DON'T HAVE ANY GUIDANCE FROM THE  
09:35:51 2 SPECIFICATION OR THE CLAIM AS TO HOW CLOSE THEY COULD BE,  
09:35:54 3 THAT'S REALLY NOT PROVIDED FOR, AND ANOTHER REASON WHY THIS IS  
09:36:00 4 INDEFINITE.

09:36:01 5 LET ME LOOK AT THE NEXT SLIDE. THIS SLIDE IS INTENDED TO  
09:36:04 6 POINT OUT THAT THEIR PROPOSED SUITABLE MIX OF INTER-PLATFORM  
09:36:09 7 DISTANCES DOESN'T SOLVE THE PROBLEM. THAT MAKES THE PROBLEM  
09:36:12 8 WORSE. THAT'S SIMPLY SAYING IF IT WORKS, IT INFRINGES. IT'S  
09:36:17 9 SUITABLE, IT INFRINGES.

09:36:19 10 AND IT'S TRUE THAT IN SOME PATENTS, YOU CAN PROVIDE  
09:36:25 11 GUIDANCE FOR WORDS LIKE "SUBSTANTIAL." IN NAUTILUS, I THINK  
09:36:30 12 THE COURT ULTIMATELY FOUND THAT THE DISTANCE OF YOUR HAND ON A  
09:36:37 13 MONITOR WAS SUFFICIENTLY SPELLED OUT IN THE SPEC. WE REALLY  
09:36:40 14 DON'T HAVE THAT HERE BECAUSE THEY ARE NOT DISCUSSING IT OR  
09:36:42 15 MAKING ANY COMMENTS ABOUT IT.

09:36:45 16 AND WE ASKED DR. HANSMAN, WHETHER "SUITABLE" WOULD GIVE  
09:36:51 17 ONE OF SKILL IN THE ART THE KIND OF GUIDANCE YOU WOULD NEED,  
09:36:54 18 AND HE SAYS ABSOLUTELY NOT, SOMEONE WOULDN'T KNOW WHAT THE MIX  
09:36:58 19 WAS TO BE SUITABLE, BECAUSE SUITABLE IS SORT OF IN THE EYE OF  
09:37:01 20 THE DESIGNER.

09:37:05 21 IT KIND OF COMES BACK TO HOW FAR APART ARE YOU GOING TO  
09:37:07 22 ALLOW YOUR BALLOONS TO BE OR HOW CLOSE WILL YOU TOLERATE AND  
09:37:12 23 HOW MUCH OR LITTLE COVERAGE WILL YOU FIND -- ARE YOU TRYING TO  
09:37:18 24 COVER -- CLAIM WITH YOUR PATENT.

09:37:20 25 AND SO IT'S NOT JUST DISTANCE, IT'S DISTANCE AND COVERAGE

09:37:24 1 THAT IS EXTREMELY VAGUE WITH THIS.

09:37:26 2 AND THAT'S WHAT I HAVE ON NAUTILUS. I WOULD LIKE TO SPEND  
09:37:30 3 JUST A MINUTE ON IPXL, YOUR HONOR, BECAUSE WHILE I THINK THE  
09:37:33 4 CLAIM FAILS, AT NAUTILUS, EVEN IF IT DIDN'T, IT WOULD FAIL AT  
09:37:38 5 IPXL.

09:37:44 6 LET'S GO TO THE NEXT SLIDE.

09:37:46 7 IT'S VERY CLEAR THAT THEY HAVE IMPROPERLY MIXED A SYSTEM  
09:37:51 8 CLAIM AND A METHOD. AND THE PROBLEM WITH THAT AS IPXL POINTS  
09:37:56 9 OUT, IS WHO IS INFRINGING. IS IT THE PERSON USING THE SYSTEM,  
09:38:00 10 IS IT THE PERSON WHO DESIGNED IT OR MANUFACTURED IT, WHO IS IT?

09:38:03 11 AND HERE. I DON'T THINK ANYBODY IS QUESTIONING THIS IS A  
09:38:07 12 SYSTEM CLAIM. IT'S A SYSTEM CLAIM AND IT HAS VARIOUS ELEMENTS.  
09:38:10 13 IT HAS THE PLATFORMS OF COMMUNICATION, THE GROUND  
09:38:13 14 COMMUNICATION, THE CAPABILITY TO HAND OFF FROM ONE BALLOON TO  
09:38:18 15 ANOTHER.

09:38:19 16 BUT THEN YOU GET DOWN HERE TO THE END, AND THAT'S CLEARLY  
09:38:21 17 AN ACTION THAT HAS TO BE TAKEN FOR EACH SYSTEM THAT'S CREATED,  
09:38:24 18 RIGHT. THEY ARE LAUNCHED IN A MANNER SUCH THAT WHEN THEY ARE  
09:38:27 19 OPERATING AT A CERTAIN ELEVATION, THERE'S THIS SUBSTANTIALLY  
09:38:31 20 RELATIVE DISTANCE.

09:38:32 21 SO EVEN IF -- EVEN IF THIS PASSES MUSTER UNDER NAUTILUS,  
09:38:38 22 AND I WANT TO STRESS TO YOUR HONOR, I DON'T THINK IT DOES.  
09:38:42 23 EVEN IF THAT WERE TRUE, THIS WOULD FALL UNDER IPXL FOR THE  
09:38:49 24 SIMPLE REASON YOU CANNOT PUT A METHOD STEP LIKE THIS INTO A  
09:38:52 25 SYSTEM OR APPARATUS CLAIM AND HAVE IT PASS MUSTER BECAUSE IT'S

09:38:55 1 NOT CLEAR ON WHO IT IS THAT'S INFRINGING, THE PERSON WHO IS  
09:39:02 2 USING THE SYSTEM, THE MANUFACTURE, THE DESIGNER, WHO IS SELLING  
09:39:05 3 IT? AND THAT'S EXACTLY THE CASE WE HAVE HERE, YOUR HONOR.

09:39:07 4 SO THAT'S WHAT I HAVE ON CLAIM ONE AND OUR INDEFINITENESS  
09:39:14 5 POINT.

09:39:15 6 THE COURT: THANK YOU. ALL RIGHT.

09:39:16 7 MR. HOSIE: MAY I BRIEFLY RESPOND, YOUR HONOR?

09:39:17 8 THE COURT: YES, THAT'S FINE.

09:39:19 9 I'M JUST LOOKING AT THE CLOCK, BECAUSE AT NOON WE ARE  
09:39:22 10 DONE, AND I WANT TO GET THROUGH EVERYTHING.

09:39:23 11 MR. HOSIE: SO THE GOOD NEWS IS I AM SUBSTANTIALLY  
09:39:25 12 COMPLETE ON THE "SUBSTANTIAL" ARGUMENT.

09:39:29 13 THREE POINTS, ACTUALLY.

09:39:31 14 THE FIRST IS EVERY POINT THAT MR. VAN NEST MADE ABOUT  
09:39:35 15 "SUBSTANTIALLY" IN THIS PATENT WOULD APPLY EQUALLY WELL TO  
09:39:39 16 EVERY OTHER CASE THAT UPHELD CLAIMS WITH THAT EXACT WORD USED,  
09:39:48 17 SUBSTANTIALLY OMNIDIRECTIONAL, SUBSTANTIALLY ATTACHED.

09:39:50 18 IF GOOGLE WERE RIGHT, EVERY ONE OF THESE CASES WOULD BE  
09:39:55 19 WRONG. AS A MATTER OF LOGIC AND LAW, HE CANNOT BE RIGHT AT  
09:39:59 20 THAT LEVEL OF SIMPLICITY. IT'S NOT INFIRM TO USE THE WORD  
09:40:03 21 "SUBSTANTIALLY."

09:40:03 22 THE COURT: WELL, IT MAY BE THAT I ACTUALLY -- THE  
09:40:05 23 FIRST POINT MR. VAN NEST MADE MAY BE THE KEY POINT, TO  
09:40:09 24 DISTINGUISH THOSE CASES TO DETERMINE WHETHER THOSE  
09:40:14 25 SPECIFICATIONS DEALT WITH THE ISSUE OR NOT.

09:40:16 1 MR. VAN NEST SUGGESTS THAT DUE TO THE LATENESS OF THIS  
09:40:18 2 LANGUAGE COMING IN, THAT THERE'S NOTHING IN THE SPECIFICATION.  
09:40:21 3 I THINK THAT'S CORRECT, BASED ON MY READING. BUT I NEED TO  
09:40:27 4 LOOK AT THE OTHER CASES AND SEE IF THERE'S THE SAME  
09:40:29 5 CIRCUMSTANCE.

09:40:30 6 MR. HOSIE: IN FAIRNESS TO MR. VAN NEST, HE'S NOT  
09:40:33 7 ENTIRELY CORRECT ON THAT BECAUSE THERE IS A TON OF DISCUSSION  
09:40:36 8 ABOUT THE PURPOSE AND NATURE OF THE OBJECTIVE, PROVIDING AS  
09:40:40 9 MUCH COVERAGE AS YOU CAN.

09:40:41 10 THE COURT: WELL, ALL PATENTS HAVE A DISCUSSION ABOUT  
09:40:43 11 THE PURPOSE AND OBJECTIVE OF THE PATENT.

09:40:45 12 MR. HOSIE: BUT IN A CASE WHERE ONE IS QUARRELLING  
09:40:47 13 ABOUT WHETHER "SUBSTANTIALLY" IS UNBRIDLED AND UNBOUND, THE  
09:40:51 14 COURTS LOOK AT THE OBJECTIVE AND THEY SAY, CAN WE INFER OR  
09:40:58 15 GATHER THE METES AND BOUNDS FROM THE FUNCTION, E.G., THE HAND.

09:41:03 16 THAT'S THE FIRST POINT.

09:41:04 17 THE SECOND POINT IS, IF I MAY ASK YOU TO GO BACK TO SLIDE  
09:41:05 18 8, PLEASE.

09:41:05 19 THE COURT: HANDS ARE A LITTLE MORE UNDERSTANDABLE  
09:41:08 20 THAN BALLOONS IN THE STRATOSPHERE THOUGH.

09:41:10 21 MR. HOSIE: BUT TO A PERSON SKILLED IN THE ART OF  
09:41:13 22 NETWORK ARRAY AND NETWORKING, NOT SO, YOUR HONOR.

09:41:15 23 PEOPLE KNOW IN THIS ART, YOU KNOW, TO COVER THIS KIND OF  
09:41:21 24 POPULATION, YOU NEED THESE BALLOONS WITH THESE COVERAGE CONES,  
09:41:25 25 YOU WILL RECALL FROM THE TUTORIAL.

09:41:27 1 AND THAT'S A PERFECT SEGUE TO THEIR SLIDE 8. THEIR SLIDE  
09:41:31 2 8 WAS WHERE THEY HAD TWO BALLOONS HERE, AND ONE IN CALIFORNIA,  
09:41:35 3 AND ONE IN TEXAS. AND THEY SAID, THEY ALL INFRINGE.

09:41:38 4 WHAT THEY DIDN'T SHOW YOU, YOUR HONOR, IS THAT IN THE TWO  
09:41:42 5 IN CALIFORNIA, THE ARRAY WAS PROVIDING COVERAGE AND COVERAGE  
09:41:45 6 CONES RIGHT THERE; WHEREAS THE TWO SPANNING THE CONTINENT HAD  
09:41:51 7 HUGE COVERAGE CONES, SO THE TWO BALLOONS COVERED THAT  
09:41:55 8 CONTIGUOUS LAND MASS.

09:41:58 9 THAT'S IMPORTANT BECAUSE, AGAIN, IT'S ALL ABOUT WHAT  
09:42:01 10 YOU'RE TRYING TO DO. YOU ARE TRYING TO GET A BALLOON ARRAY  
09:42:03 11 THAT PROVIDES THE NETWORK COVERAGE YOU WANT. AND THEY IGNORE  
09:42:07 12 THAT AGAIN AND AGAIN.

09:42:08 13 THE THIRD POINT, HE SAID WE DON'T KNOW WHAT THE YARDSTICK  
09:42:12 14 IS, IS IT PEOPLE OR IS IT GEOGRAPHY? BUT THE PATENT MAKES  
09:42:20 15 CLEAR THE PURPOSE IS TO OFFER "A CONTIGUOUS LAND MASS."

09:42:26 16 THE YARDSTICK IS EXPLICIT, AND THAT IS THE YARDSTICK.

09:42:30 17 NOW I AM NO LONGER SUBSTANTIALLY DONE, I'M DONE.

09:42:33 18 THE COURT: OKAY. ALL RIGHT.

09:42:34 19 BUT I THINK YOU ARE COMING RIGHT BACK UP BECAUSE WE ARE  
09:42:37 20 GOING TO MOVE ON TO THE "CONTROL SIGNAL PROCESSOR DEVICE" TERM.

09:42:42 21 MR. MARTIN: YOUR HONOR, ACTUALLY, I'M GOING TO BE  
09:42:44 22 DOING THAT ONE.

09:42:44 23 THE COURT: GOOD.

09:42:45 24 MR. MARTIN: LET ME CHANGE OUR SLIDES OUT HERE.

09:42:50 25 THE COURT: OKAY.

09:43:18 1 MR. MARTIN: YOUR HONOR, THE TERM "CONTROL SIGNAL  
09:43:21 2 PROCESSOR DEVICE" APPEARS IN ONLY ONE CLAIM OF THE '941 PATENT.  
09:43:25 3 IT APPEARS IN CLAIM 7.

09:43:27 4 AND CLAIM 7 IS NOT TOO LONG, IT DESCRIBES THE REGULATOR  
09:43:37 5 CLAIMED IN CLAIM 2 AS "COMPRISING A CONTROLLABLE GAS VENT, A  
09:43:43 6 CONTROLLABLE BALLAST RELEASE DEVICE, AN ALTITUDE DETERMINING  
09:43:48 7 MECHANISM, AND A CONTROL SIGNAL PROCESSOR DEVICE."

09:43:52 8 AND IT ALSO DESCRIBES, IF YOU CONTINUE READING THE CLAIM,  
09:43:56 9 WHAT THE CONTROL SIGNAL PROCESSOR DEVICE IS CONNECTED TO.

09:43:59 10 IT'S CONNECTED WITH THE TRANSCEIVER DESCRIBED IN CLAIM  
09:44:03 11 ONE, IT'S CONNECTED TO THE ALTITUDE DETERMINING MECHANISM, IT'S  
09:44:07 12 CONNECTED TO THE GAS VENT, AND IT'S CONNECTED TO THE BALLAST  
09:44:11 13 RELEASE SO THAT THE ALTITUDE CAN BE ADJUSTED.

09:44:15 14 GOOGLE ARGUES THAT THIS CLAIM IS INDEFINITE AS A MEANS  
09:44:18 15 PLUS FUNCTION TERM. BUT AS THE FEDERAL CIRCUIT VERY RECENTLY  
09:44:22 16 CLARIFIED, I THINK ON JUNE 1ST IN THE ZERO CLICK CASE, THE  
09:44:27 17 QUESTION TO ASK, THE FIRST QUESTION TO ASK WHEN DETERMINING  
09:44:30 18 WHETHER A CLAIM TERM FALLS UNDER 35 USC 112, PARAGRAPH 6, IS  
09:44:38 19 DOES THE TERM USE THE WORD "MEANS?"

09:44:41 20 AND THERE CAN'T BE ANY DISPUTE THE TERM FOR CONSTRUCTION  
09:44:46 21 HERE TODAY "CONTROL SIGNAL PROCESSOR DEVICE" DOES NOT USE THE  
09:44:50 22 TERM "MEANS." SO THERE IS A PRESUMPTION AGAINST MEANS PLUS  
09:44:56 23 FUNCTION CLAIM.

09:45:00 24 GOOGLE MAKES A VERY BRIEF ARGUMENT IN ITS OPPOSITION BRIEF  
09:45:05 25 SAYING, WELL, DEVICE IS A NONCE WORD, JUST LIKE MODULE WAS IN



09:45:13 1 WILLIAMSON V. CITRIX, IT'S A 2015 CASE OUT OF THE FEDERAL  
09:45:18 2 CIRCUIT.

09:45:18 3 WELL, FIRST, WILLIAMSON WAS CLARIFIED BY ZERO CLICK.

09:45:23 4 SECOND, THE TERM UP FOR CONSTRUCTION IN WILLIAMSON WAS  
09:45:31 5 "DISTRIBUTED LEARNING CONTROL MODULE."

09:45:35 6 NOW "DISTRIBUTED" ISN'T ANY SORT OF STRUCTURE, "LEARNING"  
09:45:40 7 ISN'T ANY SORT OF STRUCTURE, AND "CONTROL" IS NOT ANY SORT OF  
09:45:43 8 STRUCTURE, AND "MODULE" CERTAINLY IS NOT.

09:45:45 9 HERE, YOUR HONOR, THE WORD "PROCESSOR" HAS BEEN HELD BY  
09:45:49 10 MANY COURTS TO BE AT LEAST A CLASS OF STRUCTURES. THE PTAB  
09:45:56 11 HAS, IN EX PARTE CUTLET, SAID THAT "PROCESSOR" IS A STRUCTURE.  
09:46:01 12 AND THERE'S A WHOLE LINE OF CASES IN THE EASTERN DISTRICT OF  
09:46:05 13 TEXAS HOLDING THAT "PROCESSOR," JUST THE WORD "PROCESSOR" IN  
09:46:08 14 THE CLAIMS --

09:46:08 15 THE COURT: JUST THE GENERIC PROCESSOR.

09:46:12 16 MR. MARTIN: PROCESSOR CONNOTES STRUCTURE.

09:46:16 17 NOW TO OVERCOME EITHER PRESUMPTION, EITHER PARTY CAN  
09:46:20 18 DEMONSTRATE WHETHER THE WORDS OF THE CLAIM, AS UNDERSTOOD BY A  
09:46:23 19 PERSON OF ORDINARY SKILL IN THE ART, HAVE A SUFFICIENTLY  
09:46:26 20 DEFINITE MEANING FOR THE NAME OF THE STRUCTURE. AND THIS IS  
09:46:29 21 USING ORDINARY CLAIM CONSTRUCTION PRINCIPLES.

09:46:32 22 SO THE COURT CAN REFER TO THE SPECIFICATION AND THE  
09:46:37 23 FIGURES, THE EXTRINSIC EVIDENCE, ET CETERA, BUT IT'S  
09:46:43 24 DETERMINING WHETHER THE WORDS OF THE CLAIM CONNOTE STRUCTURE.

09:46:52 25 AND THIS POINT, YOUR HONOR, COURTS IN THE NORTHERN

09:46:55 1 DISTRICT OF CALIFORNIA EVALUATING PROCESSOR TERMS, DIVE INTO  
09:46:58 2 THE SPECIFICATION AND INTO THE CLAIMS AND SAY OKAY, WHAT IS THE  
09:47:02 3 TERM CONNECTED TO? WHAT IS THE PROCESSOR CONNECTED TO? WHERE  
09:47:07 4 IS IT? DO THE CLAIMS IN THE SPECIFICATION MAKE THAT CLEAR?  
09:47:11 5 WHAT'S ITS INPUT AND WHAT'S ITS OUTPUT?

09:47:17 6 AND IF THE SPECIFICATION CLAIMS DESCRIBE THAT, WELL THEN  
09:47:19 7 THEY CONCLUDE THAT IT'S NOT A MEANS PLUS FUNCTION TERM.

09:47:22 8 AND THERE'S TWO CASES ON POINT FOR THAT. THE FIRST IS  
09:47:25 9 FINJAN V. PROOFPOINT, THAT'S A CASE BY JUDGE GILLIAM FROM 2015,  
09:47:31 10 AND HE WAS DEALING WITH A CONTENT PROCESSOR IN THAT CASE.

09:47:34 11 HE LOOKED AT THE SPEC AND SAID, WELL, THE SPECIFICATION IN  
09:47:38 12 THE CLAIMS DESCRIBE WHAT PROCESSOR IT'S CONNECTED TO, WHERE IT  
09:47:43 13 IS, AND ITS INPUT AND ITS OUTPUT.

09:47:47 14 VERY SIMILAR CASE FROM 2017 ISSUED BY JUDGE DAVILA, I HOPE  
09:47:53 15 I HAVEN'T HURT HIS NAME TOO BADLY.

09:47:56 16 THE COURT: NO, THAT'S CORRECT.

09:47:58 17 MR. MARTIN: OUT OF THIS COURTROOM IN 2017, DID  
09:48:01 18 SOMETHING SIMILAR WITH A "PROCESSOR CONFIGURED TO."

09:48:04 19 HE DID THE SAME SORT OF ANALYSIS, LOOKING AT WHAT IS IT  
09:48:07 20 CONNECTED TO.

09:48:08 21 THE COURT: WHAT CASE WAS JUDGE DAVILA'S CASE?

09:48:11 22 MR. MARTIN: THAT'S QUANERGY SYSTEMS, THE CITE IS  
09:48:16 23 2017 WL4410174. THAT'S FROM LAST FALL, LAST OCTOBER, I  
09:48:23 24 BELIEVE.

09:48:25 25 SO IT'S ONLY AFTER DOING THIS SORT OF ANALYSIS THAT YOU

09:48:28 1 GET TO THE POINT THAT GOOGLE JUMPS RIGHT TO, WHICH IS, IS AN  
09:48:36 2 ALGORITHM REQUIRED?

09:48:37 3 AND GOOGLE ASSUMES AN ALGORITHM IS REQUIRED. BUT AN  
09:48:39 4 ALGORITHM IS ONLY REQUIRED IF THE -- FIRST, THE TERM IS FOUND  
09:48:45 5 TO BE A MEANS PLUS FUNCTION TERM. AND SECOND, THE TERM IS A  
09:48:49 6 COMPUTER-IMPLEMENTED CLAIM. THAT'S THE ONLY TIME ARISTOCRAT  
09:48:55 7 APPLIES. AND THAT'S THE FEDERAL CIRCUIT OPINION REQUIRING  
09:48:58 8 DISCLOSURE OF AN ALGORITHM IN THE SPECIFICATION.

09:49:05 9 AND IF ARISTOCRAT DOES NOT APPLY, THE QUESTION ASKED IS  
09:49:08 10 DOES THE REMAINDER OF THE CLAIM LANGUAGE, THE SPECIFICATION,  
09:49:11 11 THE PROSECUTION HISTORY, ET CETERA, DISCLOSE SUFFICIENTLY,  
09:49:15 12 DEFINITE STRUCTURE TO OPPOSE IT.

09:49:18 13 SO GOING TO THE CLAIM HERE, YOUR HONOR, WE'VE ALREADY  
09:49:20 14 WALKED THROUGH THE FACT THAT THE CLAIM LANGUAGE ITSELF  
09:49:23 15 DESCRIBES EXACTLY WHAT THE CONTROL SIGNAL PROCESSOR DEVICE IS  
09:49:28 16 CONNECTED TO. IT'S CONNECTED TO A TRANSCEIVER, IT'S CONNECTED  
09:49:32 17 TO AN ALTITUDE DETERMINING MECHANISM, IT'S CONNECTED TO A GAS  
09:49:36 18 VENT, AND IT'S CONNECTED TO A BALLAST RELEASE.

09:49:39 19 SO THAT RIGHT THERE GETS US OUT OF STEP ONE, AND IT SHOULD  
09:49:43 20 NOT BE CONSTRUED AS A MEANS PLUS FUNCTION TERM.

09:49:47 21 THE SPECIFICATION IS ALSO FAIRLY EXPLICIT. THIS IS  
09:49:50 22 FIGURE 14 FROM THE '941 PATENT SPECIFICATION. IT IS A BLOCK  
09:49:54 23 DIAGRAM OF THE LIGHTER-THAN-AIR PLATFORM'S HARDWARE. AND IT  
09:50:05 24 SHOWS THE PROCESSOR, IT SHOWS THE CONNECTED TO TRANSCEIVERS,  
09:50:08 25 TWO IN THIS CASE, IT SHOWS CONNECTED TO AN ALTITUDE DETERMINING

MECHANISM, IN THIS EXAMPLE A GPS RECEIVER. IT'S CONNECTED TO THE GAS VENT, AND THE BALLAST DROP. THE SPECIFICATION ALSO DESCRIBES WHERE THE CONTROL SIGNAL PROCESSOR DEVICE IS LOCATED.

THIS IS A PASSAGE FROM THE '941 SPECIFICATION DESCRIBING THE BLOCK DIAGRAM WE JUST SHOWED, AND IT SAYS THAT ALL THAT HARDWARE IS PLACED ON OR INTERCONNECTED WITH THE CIRCUIT BOARD 306.

FIGURE 11 SHOWS RIGHT WHERE THAT CIRCUIT BOARD 306 IS AND WHERE THE CONTROL SIGNAL PROCESSOR DEVICE WOULD BE LOCATED INSIDE THE PAY LOAD BOX 300.

AND THIS PORTION IN THE SPECIFICATION DESCRIBES WHAT GOES IN AND WHAT GOES OUT OF THE CONTROL SIGNAL PROCESSOR. IT RECEIVES ELECTRICAL SIGNAL INPUT AND PROVIDES ELECTRICAL SIGNAL OUTPUT. AND A DIFFERENT PART OF THE SPECIFICATION, DESCRIBES WHAT THOSE INPUTS AND OUTPUTS DO.

HERE, YOUR HONOR, WE HAVE A DIFFERENT QUOTE FROM THE SPECIFICATION, AND IT SAYS, REFERRING TO ITEM 370, WHICH IS A VALVE ACTUATOR WIRE ATTACHED TO THE GAS VENT, AND THE PROCESSOR. AND YOU CAN SEE IN ASSOCIATED FIGURE 14, OVER BY THE GREEN GAS VENT, WHICH IS LABELED 488, THERE'S ALSO AN ACTUATOR WIRE, 370, WHICH IS WHAT CONNECTS THE CONTROL SIGNAL PROCESSOR TO THE GAS VENT.

AND THIS PORTION IN THE SPECIFICATION DESCRIBES THAT WHEN ELECTRICITY IS PASSED THROUGH THE ACTUATOR WIRE, WHICH IS MADE OUT OF NICKEL TITANIUM, IT SHRINKS, SO THAT IT OPENS THE GAS

09:52:02 1 VALVE. AND SOMETHING SIMILAR HAPPENS WITH THE BALLAST DROP.

09:52:07 2 THE COURT: ALL RIGHT. THANK YOU.

09:52:07 3 A HARDSHIP TODAY.

09:52:07 4 MR. VAN NEST: HE IS RECOVERING THOUGH.

09:52:27 5 THE COURT: I HOPE IT WAS A GREAT SPORTING INJURY.

09:52:31 6 MR. HENRY: VOLLEYBALL. SO NOT QUITE WORTH THE  
09:52:33 7 INJURY, I DON'T THINK.

09:52:36 8 THE COURT: WHEN YOU TRIP OVER THE TRASH CAN IN YOUR  
09:52:38 9 OFFICE, IT'S NOT A GOOD STORY.

09:52:40 10 MR. HENRY: IT'S NOT. SHAYNE HENRY ON BEHALF OF THE  
09:52:45 11 DEFENDANTS.

09:52:46 12 TO REORIENT THE COURT, WE ARE LOOKING AT CLAIM 7 OF THE  
09:52:51 13 '941 PATENT. AND THE TERM THAT THE PARTIES ARE ASKING  
09:52:54 14 YOUR HONOR TO CONSTRUE IS "CONTROL SIGNAL PROCESSOR DEVICE."

09:52:59 15 SO THERE ARE REALLY TWO QUESTIONS BEFORE YOUR HONOR. THE  
09:53:02 16 FIRST QUESTION IS WHETHER THIS CLAIM DESERVES A MEANS PLUS  
09:53:06 17 FUNCTION TREATMENT, DESPITE THE ABSENCE OF THE WORD "MEANS" IN  
09:53:10 18 THE CLAIM TERM.

09:53:11 19 AND THE SECOND IS IF MEANS PLUS FUNCTION TREATMENT IS  
09:53:14 20 WARRANTED, WHETHER THE CLAIM CONNOTES SUFFICIENTLY DEFINITE  
09:53:19 21 CORRESPONDING STRUCTURE.

09:53:20 22 AS TO THE FIRST QUESTION, YOUR HONOR, WHETHER A MEANS PLUS  
09:53:23 23 FUNCTION TREATMENT IS WARRANTED, GRANTED THE WORD "MEANS" IS  
09:53:27 24 NOT CONTAINED IN THE CLAIM TERM AND GOOGLE CERTAINLY DOESN'T  
09:53:31 25 CONTEND THAT IT IS, HOWEVER, AS YOUR HONOR KNOWS, THAT'S NOT

DISPOSITIVE. AND SPACE DATA, IN ITS BRIEFING, AND A BIT UP  
HERE TODAY, HAS TRIED TO ARGUE THAT THE PRESUMPTION AGAINST  
MEANS PLUS FUNCTION TREATMENT AND THE ABSENCE OF THE WORD  
"MEANS" IS A HIGH BAR.

AND, IN FACT, THE FEDERAL CIRCUIT IN WILLIAMSON, AND THEN  
AGAIN AFFIRMED MORE RECENTLY IN ZERO CLICK, EXPLICITLY LESSONED  
THE STRENGTH OF THE BURDEN AGAINST MEANS PLUS FUNCTION  
TREATMENT WHEN THE WORD "MEANS" IS ABSENT FROM THE CLAIM  
LANGUAGE.

AND INSTEAD, A PARTY CAN DEMONSTRATE SIMPLY BY A  
PREPONDERANCE OF THE EVIDENCE, THAT MEANS PLUS FUNCTION  
TREATMENT IS WARRANTED. AND ONE CLASSIC WAY TO DO THIS IS BY  
SHOWING THAT THE CLAIM LANGUAGE USES WHAT ARE CALLED NONCE  
WORDS, A PLACEHOLDER FOR THE WORD "MEANS."

AND THE INSTRUCTIVE CASE HERE IS THE WILLIAMSON CASE FROM  
THE FEDERAL CIRCUIT WHERE THE COURT EXPLAINED "GENERIC TERMS  
SUCH AS 'DEVICE' AND OTHER NONCE WORDS THAT REFLECT NOTHING  
MORE THAN VERBAL CONSTRUCTS, MAY BE USED IN A CLAIM IN A MANNER  
THAT IS TANTAMOUNT TO USING THE WORD 'MEANS' BECAUSE THEY  
TYPICALLY DO NOT CONNOTE 'SUFFICIENTLY DEFINITE STRUCTURE' AND  
THEREFORE MAY INVOKE SECTION 112, PARAGRAPH 6."

AND THAT IS EXACTLY WHAT IS HAPPENING HERE. THE CLAIM  
USES THE WORD "PROCESSOR DEVICE." AND AGAIN, WILLIAMSON SAID  
THAT "DEVICE" IS JUST SUCH A GENERIC TERM, A NONCE WORD THAT IS  
A PLACEHOLDER, AND TANTAMOUNT TO USING THE WORD "MEANS."

09:54:59 1 AND SO THAT'S PRECISELY --

09:55:01 2 THE COURT: BUT YOU REJECT THE WORD "PROCESSOR,"  
09:55:05 3 WHICH IS WHAT MR. HOSIE FOCUSED ON, NOT THE WORD -- I'M SORRY,  
09:55:10 4 IT WAS NOT MR. HOSIE -- AS OPPOSED TO "PROCESSOR."

09:55:12 5 MR. HENRY: WELL, WE CAN'T RE-OUT THE WORD "DEVICE,"  
09:55:16 6 "DEVICE" IS IN THERE FOR A REASON.

09:55:17 7 THE COURT: IT'S A DEFINED DEVICE, IT'S A PROCESSOR  
09:55:20 8 DEVICE AS OPPOSED TO JUST A DEVICE. "DEVICE" IS NO MORE CLEAR  
09:55:24 9 THAN "THING." I WOULD AGREE WITH YOU. IT TRULY IS A NONCE  
09:55:27 10 WORD.

09:55:28 11 BUT THAT'S NOT WHAT THIS PATENT HAS. THIS PATENT SHOWS A  
09:55:31 12 PROCESSOR DEVICE.

09:55:32 13 MR. HENRY: IT SHOWS A PROCESSOR DEVICE.

09:55:34 14 THE COURT: AND SO, IN FACT, THE WORD "DEVICE"  
09:55:36 15 DOESN'T EVEN NEED -- IT'S SUPERFLUOUS.

09:55:41 16 MR. HENRY: SO IF WE FOCUS ON THE WORD "PROCESSOR,"  
09:55:43 17 IF YOU WILL TURN ONE MORE SLIDE, THAT IS WHAT SPACE DATA AND  
09:55:47 18 ITS EXPERT POINT TO, THE GENERAL PURPOSE PROCESSOR THAT IS  
09:55:51 19 LOCATED IN FIGURE 14 OF THE PATENT, WHICH REALLY IS JUST A  
09:55:55 20 BLACK BOX PROCESSOR.

09:55:57 21 AND COUNSEL, TODAY, SAID THAT THERE ARE NUMEROUS CASES  
09:56:01 22 WHERE A GENERAL PURPOSE PROCESSOR WAS DEEMED SUFFICIENT, THAT  
09:56:05 23 IT CONNECTED STRUCTURE, AND THEY CITE TO CASES. BUT THE CASES  
09:56:09 24 THEY CITE TO, FOR EXAMPLE, THE FINJAN CASE HERE IN THE NORTHERN  
09:56:14 25 DISTRICT, WHAT WAS DISPOSITIVE IS THAT THE PATENT EXPLAINED THE

INTERACTION BETWEEN THE PROCESSOR AND THE INPUTS AND OUTPUTS.

OPPOSING COUNSEL MADE NO MENTION OF THE INTERACTION BETWEEN THE INPUTS AND THE OUTPUTS AND THE PROCESSOR, THAT'S BECAUSE THE SPECIFICATION DOESN'T PROVIDE THAT INTERACTION.

AND IN FACT, WILLIAMSON EXPLAINED THIS EXPLICITLY SAYING THAT THE FACT THAT PORTIONS OF THE CLAIM DESCRIBE INPUTS AND OUTPUTS AT A VERY HIGH LEVEL, DOES NOT DESCRIBE HOW THE TERM INTERACTS WITH OTHER COMPONENTS IN A WAY THAT MIGHT INFORM THE STRUCTURAL CHARACTER OF THE LIMITATION IN QUESTION OR OTHERWISE IMPART STRUCTURE TO THE TERM AS RECITED IN THE CLAIM.

SO IT'S NOT ENOUGH SIMPLY TO POINT TO INPUTS AND OUTPUTS THAT CONNECT TO AND FOLLOW FROM THE PROCESSOR. IN FACT, TO THE SPECIFICATION, OR MORE SPECIFICALLY IN FINJAN, THE CLAIM ITSELF MUST EXPLAIN THE INTERACTION BETWEEN THE INPUTS, OUTPUTS, AND THE PROCESSOR ITSELF; OTHERWISE, THE PROCESSOR IS SIMPLY A BLACK BOX. AND NUMEROUS CASES HAVE FOUND WHERE THAT'S THE CASE, THE PROCESSOR IS --

THE COURT: BUT HOW IS THIS DIFFERENT THAN THE PROBLEM THAT JUDGE TIGERT RAN INTO, AT LEAST IN THE VIEW OF THE FEDERAL CIRCUIT IN THE ZERO CLICK CASE?

I MEAN, IT WAS A PRETTY RESOUNDING REVERSAL, I'M SORRY TO SAY, AND REALLY WAS INSISTENT THAT THERE HAS TO BE EVIDENCE OF EVIDENTIARY FINDINGS MADE ON THESE POINTS.

AND I'M NOT REALLY SEEING IT IN YOUR RECITAL HERE.

MR. HENRY: SO IN ZERO CLICK, THAT CASE IS QUITE



1 DISTINGUISHABLE. SO THERE, THE TERMS THAT WERE UP FOR  
2 CONSTRUCTION INCLUDED A "GRAPHIC USER INTERFACE" AND "CODE."

3 AND THERE, THE COURT LOOKED AT THE SPECIFICATION AND SAW  
4 THAT THE CODE IN THE PROGRAMS THAT WERE AT ISSUE, WERE CLEARLY  
5 DISCLOSED IN THE SPECIFICATION, AND IN FACT IN THE PRIOR ART.  
6 IT WAS THE CODE AND THE PROGRAM THAT THE PATENT'S INVENTION  
7 UPGRADED TO ALLOW FOR TOUCH CONTROL RATHER THAN MOUSE CLICK  
8 CONTROL.

9 SO THERE'S REALLY NO QUESTION ABOUT WHAT THE PROGRAM AND  
10 CODE WAS IN THAT CASE.

11 HERE, THE SPECIFICATION DOESN'T TELL US WHAT THE PROCESSOR  
12 DOES, HOW IT INTERACTS WITH THE OUTPUTS AND THE INPUTS. AND  
13 THEN OF COURSE ANOTHER DISTINCTION BETWEEN ZERO CLICK AND THIS  
14 CASE IS THAT ZERO CLICK DIDN'T ADDRESS THE USE OF NONCE WORDS  
15 SUCH AS "PROCESSOR DEVICES" IN THIS CASE.

16 SO ONCE YOU'VE ADDRESSED WHETHER THE MEANS PLUS FUNCTION  
17 TREATMENT APPLIES, WHICH WE WOULD ENCOURAGE YOUR HONOR TO FIND  
18 IN THE AFFIRMATIVE. THE SECOND QUESTION IS WHETHER THE CLAIM  
19 LACKS A CORRESPONDING SUFFICIENT DEFINITE STRUCTURE IN THE  
20 SPECIFICATION.

21 AND AGAIN, YOUR HONOR SHOULD ANSWER IN THE AFFIRMATIVE  
22 BECAUSE A PERSON OF ORDINARY SKILL IN THE ART WOULD NOT BE ABLE  
23 TO FIGURE OUT HOW THE STRUCTURE OF THE CONTROL SIGNAL PROCESSOR  
24 DEVICE OPERATES BASED ON THE SPECIFICATION LANGUAGE IN THE '941  
25 PATENT.

09:59:13 1 AGAIN, SPACE DATA POINTS TO THIS BLACK BOX PROCESSOR. AND  
09:59:20 2 THERE'S A CASE QUITE ON POINT HERE WHICH IS THE NOAH SYSTEMS  
09:59:24 3 CASE WHERE THE FEDERAL CIRCUIT EXPLAINED IN CASES SUCH AS THIS  
09:59:30 4 ONE INVOLVING A SPECIAL PURPOSE COMPUTER IMPLEMENTED MEANS PLUS  
09:59:34 5 FUNCTION LIMITATION, THE FEDERAL CIRCUIT HAS CONSISTENTLY  
09:59:36 6 REQUIRED THAT THE STRUCTURE DISCLOSED IN THE SPECIFICATION BE  
09:59:39 7 MORE THAN SIMPLY A GENERAL PURPOSE COMPUTER OR MICROPROCESSOR.

09:59:44 8 AND THE REASON WHY WE KNOW MORE THAN JUST A GENERAL  
09:59:49 9 PURPOSE MICROPROCESSOR IS NECESSARY HERE IS BECAUSE OF THE  
09:59:51 10 TESTIMONY OF SPACE DATA'S OWN EXPERT, DR. PULLEN.

09:59:53 11 DR. PULLEN EXPLAINED, AND HERE'S THE RELEVANT TESTIMONY ON  
09:59:56 12 THE SCREEN. IF YOU WILL GO BACK ONE SLIDE. DR. PULLEN IS  
10:00:05 13 ASKED, "CAN YOU DESCRIBE FOR ME WHAT THE STRUCTURE OF A CONTROL  
10:00:07 14 SIGNAL PROCESSOR DEVICE WOULD BE?"

10:00:09 15 "ANSWER: ONE WAY TO ANSWER IS TO LOOK AT THE EXAMPLE  
10:00:11 16 IN FIGURE 14 OF THE SPECIFICATION."

10:00:14 17 AND THE NEXT SLIDE.

10:00:16 18 "QUESTION: HOW DOES THE CONTROL SIGNAL PROCESSOR  
10:00:17 19 DEVICE DETERMINE HOW MUCH BALLAST TO RELEASE IN THIS PARTICULAR  
10:00:21 20 SITUATION?

10:00:22 21 "ANSWER: THERE ARE MANY DIFFERENT WAYS TO DO IT. IT  
10:00:24 22 USES A SIMPLE CALCULATION PROCEDURE.

10:00:26 23 "QUESTION: WHAT IS THE SIMPLE CALCULATION PROCEDURE  
10:00:29 24 IT USES?

10:00:30 25 "ANSWER: WE CALL IT A CONTROL LAW."

10:00:34 1 "QUESTION: IS THE CONTROL LAW, IS THAT AN ALGORITHM?  
10:00:36 2 IS IT A PROCESS? I -- I JUST DON'T -- I HAVEN'T HEARD OF IT.

10:00:40 3 "ANSWER: IT'S A SMALL ELEMENT OF SOFTWARE. IT  
10:00:43 4 DEPENDS ON EXACTLY WHAT IT IS."

10:00:45 5 AND I THINK THIS DOES ILLUSTRATE THE POINT, IT DOES DEPEND  
10:00:49 6 ON EXACTLY WHAT IT IS. DR. PULLEN SAYS IT'S A CALCULATION, HE  
10:00:51 7 CALLS IT A CONTROL LAW. HE SAYS IT'S AN ELEMENT OF SOFTWARE.

10:00:54 8 NONE OF THAT IS DISCLOSED IN THE SPECIFICATION. WE DON'T  
10:00:57 9 SEE A CONTROL LAW, WE DON'T SEE A CALCULATION, WE DON'T SEE ANY  
10:01:00 10 MENTION OF SOFTWARE ELEMENTS. SO IT REALLY IS TRULY JUST A  
10:01:04 11 BLACK BOX, GENERAL PURPOSE PROCESSOR.

10:01:06 12 AND AS I JUST EXPLAINED TO YOUR HONOR, IN THAT SITUATION,  
10:01:08 13 THE COURTS HAVE SIMPLY FOUND THAT THAT'S JUST NOT ENOUGH.

10:01:11 14 THE COURT: ALL RIGHT.

10:01:15 15 MR. MARTIN: MAY I HAVE JUST A BRIEF REBUTTAL,  
10:01:18 16 YOUR HONOR?

10:01:18 17 THE COURT: SURE, OF COURSE.

10:01:30 18 MR. MARTIN: I WILL LIMIT MYSELF TO JUST THREE  
10:01:34 19 POINTS, MAYBE FOUR.

10:01:35 20 FIRST, YOUR HONOR, GREENBERG V. ETHICON, WHICH IS A MUCH  
10:01:40 21 CITED FEDERAL CIRCUIT CASE IN THIS PARTICULAR AREA OF LAW, IN  
10:01:46 22 ZERO CLICK AT LEAST TWICE, IS WELL KNOWN FOR THE PROPOSITION  
10:01:51 23 THAT MANY DEVICES TAKE THEIR NAMES FROM WHAT THEY DO.

10:01:55 24 FOR EXAMPLE, SCREWDRIVER. ANOTHER WELL-KNOWN FEDERAL  
10:02:01 25 CIRCUIT CASE, THYSSENKRUPP ELEVATOR. AND ACTUALLY, THE TERM

1 FOUND NOT INDEFINITE IN THAT CASE WAS "MODERNIZING DEVICE."

2 NOW YOUR HONOR, IF THE USER INTERFACE CODE AND THE PROGRAM  
3 OF ZERO CLICK HAVE STRUCTURE, A PROCESSOR MOST CERTAINLY DOES.  
4 YOU CAN BREAK OPEN YOUR PHONE AND PULL OUT A PHYSICAL THING  
5 CALLED A PROCESSOR. IT'S VERY SMALL, IT WILL FIT IN THE PALM  
6 OF YOUR HAND, BUT YOU CAN CERTAINLY DO IT.

7 AS TO COUNSEL'S POINT THAT THIS IS ONLY A GENERAL PURPOSE  
8 PROCESSOR, COUNSEL IS INCORRECT THERE. MR. PULLEN'S TESTIMONY  
9 WAS THAT YOU COULD DO THIS WITH A DIGITAL IMPLEMENTATION, OR IT  
10 CAN BE DONE WITH AN ANALOG CONTROLLER COMPOSED OF ELECTRICAL  
11 ELEMENTS SUCH AS TRANSISTORS, RESISTORS, CAPACITORS, DIODES,  
12 AND SO FORTH.

13 YOUR HONOR, THOSE ARE STRUCTURES. A RESISTOR, YOU BUY  
14 SOME AT BEST BUY IF YOU WANT, THEY ARE LITTLE ELECTRONIC  
15 ELEMENTS, AND THEY CAN BE STREWN TOGETHER TO IMPLEMENT CONTROL  
16 SIGNALS TO OPEN THE GAS VALVE BY HAVING AN ELECTRICAL OUTPUT,  
17 AS DESCRIBED IN THE SPECIFICATION.

18 AND ON THAT POINT, YOUR HONOR, THE FEDERAL CIRCUIT IN  
19 LINEAR TECHNOLOGIES HAS HELD THAT THE WORD "CIRCUIT" IS MOST  
20 CERTAINLY A WORD THAT CAN HAVE STRUCTURE.

21 AND THAT'S ALL, YOUR HONOR.

22 THE COURT: OKAY. THANK YOU.

23 ALL RIGHT. AND JUST FOR CLARITY, MR. HENRY, IF I AGREE  
24 WITH GOOGLE ON THE PREVIOUS CLAIM THAT IT'S INDEFINITE, THEN  
25 THIS WOULD BECOME MOOT, WOULDN'T IT?

10:04:03 1 MR. HENRY: THAT'S CORRECT, YOUR HONOR.

10:04:04 2 THE COURT: OKAY.

10:04:07 3 MR. VAN NEST: YOUR HONOR, THAT COMPLETES ALL OUR  
10:04:10 4 DISCUSSION ON THE '941 PATENT. SO WE ARE ABOUT TO MOVE ON TO  
10:04:14 5 THE OTHER TWO.

10:04:15 6 THE COURT: GREAT. ALL RIGHT.

10:04:17 7 THEN WE ARE GOING TO MOVE ON TO THE NEXT TERM, WHICH IS IN  
10:04:28 8 THE '193. THAT'S "DETERMINING A DESIRED MOVEMENT OF A TARGET  
10:04:34 9 BALLOON."

10:04:43 10 MR. HOSIE, CAN I JUST SHORT CIRCUIT THIS SO YOU CAN  
10:04:51 11 ADDRESS IT IN YOUR DISCUSSION. I'M NOT LEANING TOWARD THE  
10:04:58 12 PROPOSAL BY GOOGLE, BUT YOUR SUGGESTION OF PLAIN AND ORDINARY,  
10:05:04 13 I THINK OPENS A PANDORA'S BOX FOR US AT TRIAL.

10:05:12 14 AND YOU, IN YOUR REPLY BRIEF, BREAK DOWN THIS PHRASE TO  
10:05:18 15 SHOW HOW BASIC IT IS AND HOW IT COULD BE UNDERSTOOD. AND I'M  
10:05:23 16 REALLY LOOKING FOR SOME CONSTRUCTION THAT BREAKS IT DOWN. I'M  
10:05:28 17 REALLY CONCERNED THAT WE ARE GOING TO GET TO TRIAL AND THE WORD  
10:05:31 18 "MOVEMENT" IS GOING TO BECOME A BIG ISSUE, EVEN THOUGH IT  
10:05:35 19 DOESN'T SEEM LIKE A TECHNICAL TERM, AND SOME OF THE OTHER  
10:05:41 20 TERMINOLOGY.

10:05:42 21 SO EVEN IF I'M LEANING IN YOUR DIRECTION, I'M STILL  
10:05:45 22 WANTING SOME CONSTRUCTION OF THE TERM.

10:05:51 23 MR. HOSIE: FAIR POINT, YOUR HONOR.

10:05:52 24 AND WE DO ILLUSTRATE THAT IN OUR REPLY BRIEF. WE BREAK IT  
10:05:57 25 DOWN STEP-BY-STEP.

10:06:00 1 I HAVE TO AGREE THAT THERE'S A LOT OF WORDS IN THIS CLAIM,  
10:06:03 2 IRONICALLY ENOUGH, GOOGLE WROTE IT. THIS WAS THE CLAIM THAT  
10:06:06 3 WAS RECAPTURED VERBATIM. AND THEY PROSECUTED IT HERE IN THIS  
10:06:12 4 COUNTRY TO CONCLUSION --

10:06:14 5 THE COURT: AND THE MERE FACT THAT IT WAS THEIR CLAIM  
10:06:16 6 TERM DOESN'T MEAN THEY CAN'T TEAR IT APART.

10:06:19 7 MR. HOSIE: AGREED, BUT I THINK IT IS, NONETHELESS,  
10:06:22 8 RELEVANT THAT GOOGLE FOUND THE WORDS COHERENT, BECAUSE IT USED  
10:06:28 9 THEM NOT ONCE, BUT DOZENS OF TIMES TO SECURE THE PATENTS.

10:06:32 10 BUT, YOU KNOW, IT'S A LOT OF WORDS.

10:06:34 11 THE COURT: IT'S A LOT OF WORDS.

10:06:35 12 MR. HOSIE: IT'S A LOT OF WORDS, AND "DESIRING A  
10:06:38 13 DETERMINED MOVEMENT OF THE TARGET BALLOON." THE TARGET BALLOON  
10:06:40 14 IS THE BALLOON YOU WANT TO MOVE, BASED ON WHERE YOU WANT TO  
10:06:44 15 MOVE IT.

10:06:45 16 THE COURT: I GUESS "MOVEMENT" IS REALLY, IT SEEMED  
10:06:48 17 TO BE THE WORD THAT WAS IN MOST CONTENTION HERE IN COMING UP  
10:06:51 18 WITH A CONSTRUCTION.

10:06:52 19 THAT'S REALLY MY -- THE OTHER TERMS DIDN'T -- WORDS. YOU  
10:06:57 20 KNOW, WHEN YOU BREAK IT DOWN WORD-BY-WORD, IT LOOKS PRETTY  
10:07:00 21 SIMPLE. WHEN YOU TRY TO PUT IT TOGETHER AND UNDERSTAND WHAT  
10:07:02 22 THE CONCEPT IS, IT GETS COMPLICATED.

10:07:05 23 MR. HOSIE: AGREED, YOUR HONOR.

10:07:06 24 THE COURT: THAT'S MY POINT.

10:07:08 25 MR. HOSIE: "MOVEMENT," IT'S HARD TO SEE HOW ONE

1 WOULD PHRASE THIS WITHOUT THE WORD "MOVEMENT" BECAUSE THE WHOLE  
2 POINT --

3 THE COURT: IS "MOVEMENT" THE -- YOU TALK ABOUT, I  
4 BELIEVE THIS IS THE TERM WHERE YOU TALK ABOUT OTHER TERMS --  
5 LET'S GET MY NOTES OUT HERE -- THAT GOOGLE'S CONSTRUCTION WOULD  
6 READ OUT CLAIMS 7, 8, 9 AND POSSIBLY 13, THAT DEFINE "MOVEMENT"  
7 AS LIMITED TO DIRECTION OF MOVEMENT, VELOCITY, DISTANCE.

8 I DON'T KNOW WHETHER YOU ARE SAYING THAT MOVEMENT -- I  
9 DON'T KNOW WHAT MOVEMENT IS WHEN IT'S NOT SPECIFICALLY DEFINED.  
10 THAT'S REALLY ONE OF MY PROBLEMS HERE.

11 MR. HOSIE: WELL, BECAUSE GOOGLE IS SAYING LOOK,  
12 THERE'S ONLY ONE SPECIES OF MOVEMENT PERMITTED IN THIS CLAIM.  
13 AND THAT'S CLEARLY NOT RIGHT, THEY ARE REPORTING A WHOLE SERIES  
14 OF LIMITATIONS.

15 THE COURT: SO YOU ARE SAYING IT INCORPORATES ALL  
16 KINDS OF MOVEMENT.

17 MR. HOSIE: ABSOLUTELY.

18 FOR EXAMPLE, THEY ARE SAYING YOU'VE GOT TO MOVE A BALLOON  
19 FROM TOPEKA, KANSAS TO ST. LOUIS, MISSOURI, BUT THE DESIRED  
20 MOVEMENT MIGHT BE TO MOVE IT INTO A WIND DIRECTION AND LET IT  
21 HEAD NORTH FOR SOME UNSPECIFIC PERIOD, AND THEN YOU MAKE A  
22 DECISION LATER.

23 THIS CLAIM LANGUAGE ACCOMMODATES THAT KIND OF MOVEMENT.  
24 BUT PUT SIMPLY, THAT'S SIMPLY A LOT OF WORDS TO DESCRIBE THE  
25 NOTION IF YOU FIGURE OUT WHICH BALLOON YOU WANT TO PUT

10:08:37 1 SOMEWHERE ELSE, AND THEN YOU START IT ON ITS PATH TO SOMEWHERE  
10:08:42 2 ELSE. AND THE "SOMEWHERE ELSE" DOESN'T HAVE TO BE A SPECIFIC  
10:08:45 3 LOCATION, IT CAN BE A GRADIENT, IT CAN BE INTO A WIND PATTERN,  
10:08:51 4 IT CAN BE A DIRECTION.

10:08:53 5 BUT SIMPLY PUT, THERE'S A BALLOON, THEY CALL IT THE TARGET  
10:08:58 6 BALLOON, I THINK WE CAN USE BETTER LANGUAGE THAN "TARGET  
10:09:01 7 BALLOON," ISOLATE THE BALLOON YOU WANT TO MOVE, AND THEN TELL  
10:09:08 8 IT TO GO SOMEWHERE ELSE.

10:09:09 9 THE COURT: SO I GUESS WHAT THREW ME OFF HERE WAS, IN  
10:09:12 10 YOUR REPLY BRIEF AT PAGE 10, YOU TALK ABOUT ONE DETERMINES HOW  
10:09:19 11 THE TARGET BALLOON SHOULD BE MOVED ACCORDINGLY; IN SHORT, WHERE  
10:09:23 12 IS THE BALLOON TO BE MOVED, WHERE SHOULD IT BE MOVED TO, THEN  
10:09:27 13 MOVE IT ACCORDINGLY.

10:09:31 14 SO I WAS A LITTLE CONFUSED AS TO WHETHER YOU WERE DEFINING  
10:09:34 15 "MOVEMENT" AS TANTAMOUNT TO "LOCATION" WHICH I THINK IS NOT  
10:09:38 16 WHAT YOU'RE -- SO I GOT CONFUSED THERE.

10:09:42 17 MR. HOSIE: NO, YOUR HONOR, WE ARE NOT AGREEING THAT  
10:09:46 18 MOVEMENT IS TANTAMOUNT TO LOCATION. THAT'S GOOGLE'S WHOLE  
10:09:50 19 POINT. YOU'VE GOT TO GO FROM TOPEKA TO ST. LOUIS. BUT NO, YOU  
10:09:56 20 COULD MOVE IT IN A DIRECTION. GO NORTH, GO WEST.

10:10:00 21 THE COURT: SO MOVEMENT IS THE PROCESS OF MOVING.

10:10:02 22 MR. HOSIE: YES.

10:10:02 23 THE COURT: WITHOUT CONSIDERATION OF LOCATION.

10:10:05 24 MR. HOSIE: WITHOUT BEING RESTRICTED TO GOING TO A  
10:10:08 25 SPECIFIC LOCATION.



10:10:10 1 THE COURT: OKAY.

10:10:11 2 MR. HOSIE: IT'S THE PROCESS OF MOVING. AND IT'S NOT  
10:10:15 3 MOVING TO A SPECIFIC LOCATION, IT'S NOT EVEN LIMITED TO A  
10:10:19 4 SPECIFIC REASON, E.G., THEIR LIMITATION TO MAINTAIN A DESIRED  
10:10:25 5 NETWORK TOPOLOGY.

10:10:26 6 YOU COULD MOVE A BALLOON BECAUSE IT WAS ABOUT TO GO INTO  
10:10:29 7 THE DMZ AND SPARK A NUCLEAR WAR WITH NORTH KOREA. THAT HAS  
10:10:33 8 NOTHING TO DO WITH THE NETWORK TOPOLOGY, BUT YOU COULD MOVE  
10:10:34 9 THAT BALLOON FOR THAT REASON, AND THAT WOULD BE COVERED BY THIS  
10:10:36 10 CLAIM, ABSENT THE LIMITATIONS THAT GOOGLE ROBUSTLY IMPORTS INTO  
10:10:42 11 THIS CLAIM.

10:10:42 12 BUT IT REALLY IS -- AND WE WRESTLED WITH THIS, YOUR HONOR,  
10:10:46 13 IT'S ALWAYS A LITTLE RISKY TO GO WITH THE PLAIN LANGUAGE,  
10:10:50 14 ESPECIALLY WHEN THERE ARE THIS MANY WORDS IN THE PLAIN CLAIM.  
10:10:54 15 BUT IT'S, LOOK AT WHICH BALLOON YOU WANT TO MOVE AND THEN  
10:10:57 16 SENDING IT ON ITS WAY.

10:10:59 17 THE COURT: WELL, I AM GOING TO ASK YOU TO DO  
10:11:02 18 SOMETHING, BECAUSE YOU'VE BEEN IN TRIALS LIKE THIS, AND I'VE  
10:11:05 19 BEEN IN TRIALS LIKE THIS WHERE ALL OF THE SUDDEN THE JURY IS  
10:11:08 20 SITTING THERE, THERE'S A SIDEBAR BECAUSE THERE'S AN OBJECTION  
10:11:11 21 THAT THE EXPERT IS GIVING -- IS READING MEANING INTO A WORD  
10:11:15 22 LIKE "MOVEMENT," THAT IT IS A PLAIN AND ORDINARY MEANING, AND  
10:11:19 23 IT'S NEVER BEEN CONSTRUED. AND ALL OF THE SUDDEN AT SIDEBAR,  
10:11:23 24 I'M DOING CLAIMS CONSTRUCTION.

10:11:26 25 I'M NOT GOOD AT DOING IT THAT WAY. SO I WOULD LIKE IT

1 NAILED DOWN HERE. AND I WOULD LIKE YOU TO -- I NEED A PROPOSAL  
2 FROM YOU. NOT NOW, ON THE FLY, OF COURSE.

3 MR. HOSIE: OKAY. WELL, WE WOULD BE HAPPY TO DO  
4 THAT, AND PERHAPS WITH GUIDANCE FROM THE COURT, WE CAN GET  
5 TOGETHER WITH GOOGLE AND STIPULATE TO SOMETHING THAT DOESN'T  
6 IMPORT ALL OF THESE LIMITATIONS.

7 THE COURT: STIPULATIONS ARE ALWAYS WELCOME.

8 MR. HOSIE: I THINK I HAVE I ADDRESSED YOUR HONOR.

9 THE COURT: YOU HAVE.

10 SO NOW I WILL LET YOU GO AHEAD WITH YOUR PRESENTATION.

11 MR. HOSIE: I THINK YOU'VE PRETTY MUCH COVERED IT.

12 SHORT STORY, THEY ARE IMPORTING A BUNCH OF LIMITATIONS,  
13 THE LIMITATIONS AREN'T SUPPORTED BY THE SPECIFICATION. THEY  
14 HAVE A PURPOSED LIMITATION TO A NETWORK TOPOLOGY. THEY SAY  
15 THERE'S ONLY ONE KIND OF MOVEMENT POSSIBLE AND PERMITTED, WHICH  
16 IS TO GO FROM ONE SPECIFIC LOCATION TO ANOTHER SPECIFIC  
17 LOCATION. AND SO THEY ARE READING IN THREE OR FOUR LIMITATIONS  
18 INTO THE CLAIM WHERE THAT'S NOT SUPPORTED IN THE PROSECUTION  
19 HISTORY OR THE SPECIFICATION WHATSOEVER. AND THAT'S, OF  
20 COURSE, PER SE, IMPROPER.

21 THE COURT: THANK YOU.

22 MR. HOSIE: THANK YOU.

23 THE COURT: MR. KAMBER.

24 MR. KAMBER: GOOD MORNING, YOUR HONOR.

25 MATTHIAS KAMBER ON BEHALF OF DEFENDANTS.

10:12:45 1 THE COURT: GOOD MORNING.

10:12:45 2 MR. KAMBER: I THINK WE HAVE A DIFFERENT PROPOSAL. I  
10:12:48 3 WANT TO PUT IT UP ON THE SCREEN SO THAT HOPEFULLY WILL SIMPLIFY  
10:12:51 4 IT IN JUST A MOMENT. BUT I WANT TO JUST LOOK AT THE CLAIM  
10:12:54 5 LANGUAGE TO PROVIDE THE CONTEXT IN WHAT WE ARE REALLY TALKING  
10:12:58 6 ABOUT HERE.

10:13:00 7 THE ISSUE HERE, OF COURSE, IS THIS THIRD ELEMENT,  
10:13:03 8 "DETERMINING A DESIRED MOVEMENT." THE FIRST ELEMENT IS TO  
10:13:07 9 DETERMINE A BALLOON'S LOCATION. THE SECOND ONE IS YOU LOOK AT  
10:13:10 10 THE NEIGHBORING BALLOONS AND FIGURE OUT WHERE THEY ARE RELATIVE  
10:13:13 11 TO THAT BALLOON, AND THEN DETERMINE WHERE TO POSITION THE  
10:13:18 12 BALLOON, YOUR TARGET BALLOON, WHICH IS A BIT OF A CONFUSING  
10:13:22 13 TERM.

10:13:22 14 SO WE HAVE AN ILLUSTRATION OF THIS PRINCIPLE ON THE NEXT  
10:13:29 15 SLIDE. IMAGINE YOU HAVE THIS FORMATION OF BALLOONS, THEY ARE  
10:13:32 16 ALL EQUALLY SPACED APART IN THIS PARTICULAR EXAMPLE. AND THE  
10:13:37 17 BALLOON IN THE CENTER, BALLOON A, IS WHAT YOU MIGHT CALL THE  
10:13:41 18 TARGET BALLOON. AND IT COULD GET BLOWN OFF POSITION, AS WE  
10:13:47 19 SHOW HERE ON THE SCREEN.

10:13:50 20 AND THE TECHNIQUE THAT'S CLAIMED IN THIS PATENT CLAIM IS  
10:13:53 21 TO DEAL WITH THAT SITUATION, HOW DO YOU MOVE THE BALLOON BACK  
10:13:56 22 TO THE POSITION WHERE YOU WANT IT, RIGHT.

10:14:00 23 AND WE SEE THAT AGAIN, FIND THAT TARGET BALLOON, YOU LOOK  
10:14:03 24 AT THE NEIGHBORING BALLOONS' LOCATIONS AND THEN YOU DETERMINE  
10:14:07 25 THE DESIRED MOVEMENT BASED ON THE RELATIVE DETERMINED LOCATIONS

1 OF THOSE OTHER BALLOONS.

2 THE DESIRED MOVEMENT, ULTIMATELY, IS TO PUT THAT BALLOON  
3 BACK IN THE SPOT WHERE IT SHOULD BE, WHERE YOU WANT IT TO BE.

4 SO TO GO TO THE CONSTRUCTIONS, WE HAD THIS CONSTRUCTION  
5 ORIGINALLY, AND I WOULD LIKE TO MOVE TO THE NEXT SLIDE, TO SHOW  
6 YOU, I THINK IN THE PROCESS OF PREPARING FOR THE ARGUMENT, WE,  
7 I THINK HAVE REFINED THIS A LITTLE BIT.

8 THIS IS A RED LINE HERE OF OUR PROPOSED ORIGINAL PROPOSAL.  
9 AND WE'VE CHANGED THE LANGUAGE. I THINK IT'S, FRANKLY, EASIER  
10 TO LOOK AT IT ON THE NEXT SLIDE YOUR HONOR, AND YOU WILL SEE  
11 WHY. THIS IS TRYING TO SIMPLIFY THIS SO THAT A JURY CAN  
12 UNDERSTAND IT.

13 DETERMINING WHERE TO POSITION A PARTICULAR BALLOON AS A  
14 FUNCTION OF ITS LOCATION, RELATIVE TO ONE OR MORE NEIGHBORING  
15 BALLOONS TO MAINTAIN A DESIRED NETWORK TOPOLOGY.

16 THE COURT: SO YOU STILL INCLUDE THE THREE  
17 LIMITATIONS THAT MR. HOSIE TAKES ISSUE WITH, DON'T YOU?

18 MR. KAMBER: WE DO, AND I'M GOING TO GO THROUGH EACH  
19 AND EVERY ONE OF THOSE THAT THEY ADDRESSED IN THEIR REPLY BRIEF  
20 AND TALK ABOUT WHAT THE BASIS IS FOR INCLUDING THINGS.

21 NOW, WHERE TO POSITION, THAT IS ONE OF THE ISSUES THAT  
22 THEY HAVE. AND AS YOU JUST POINTED OUT, THEIR OWN REPLY BRIEF  
23 ON PAGE 10 TALKS ABOUT MOVEMENT, WHERE SHOULD IT BE MOVED TO,  
24 WHERE IS THE BALLOON, WHERE SHOULD IT BE MOVED TO.

25 THAT'S A QUESTION ABOUT POSITION. AND THIS IS IN THE '678

10:15:50 1 PATENT FROM WHICH THESE CLAIMS ORIGINALLY ISSUED THAT BOTH  
10:15:55 2 PARTIES ARE LOOKING AT AS --

10:15:56 3 THE COURT: SHOULD I BE LOOKING AT THE '678?

10:15:59 4 MR. KAMBER: I THINK --

10:16:00 5 THE COURT: IT'S NOT ACTUALLY INCORPORATED BY  
10:16:03 6 REFERENCE, IS IT?

10:16:03 7 MR. KAMBER: IT IS NOT INCORPORATED BY REFERENCE. IT  
10:16:06 8 IS PART OF THE PROSECUTION HISTORY BECAUSE OF THE INTERFERENCE.

10:16:10 9 THE COURT: RIGHT. IT WAS UNCLEAR TO ME ON HOW MUCH  
10:16:13 10 I WOULD RELY ON IT. WHEN IT'S INCORPORATED BY REFERENCE I KNOW  
10:16:16 11 WHAT TO DO. WHEN IT'S PART OF INTERFERENCE, NOT ALL OF THE  
10:16:20 12 CLAIMS WERE TRANSFERRED TO SPACE DATA.

10:16:22 13 MR. KAMBER: THAT'S CORRECT.

10:16:22 14 THE COURT: SO IT BECOMES, I GUESS, ABOUT SLICING AND  
10:16:26 15 DIEING THE SPECS TO BE SURE THAT THEY RELATE TO THE CLAIMS THAT  
10:16:31 16 SPACE DATA NOW HAS IN THIS PATENT.

10:16:35 17 MR. KAMBER: THAT'S RIGHT. AND I THINK IT'S TRUE  
10:16:36 18 THAT THERE ARE DIFFERENT SPECIFICATIONS THAT COULD SUPPORT  
10:16:39 19 DIFFERENT CLAIM CONSTRUCTIONS.

10:16:40 20 FOR EXAMPLE, IF THE PARTIES, ACTED AS THEIR OWN  
10:16:46 21 LEXICOGRAPHERS IN DIFFERENT WAY, THAT'S AN EXAMPLE.

10:16:49 22 HERE I THINK IT'S NOT DIRECTLY IN THE SPECIFICATION OF THE  
10:16:51 23 '193 PATENT, BOTH PARTIES HAVE BEEN RELYING ON IT.

10:16:55 24 THE COURT: OKAY.

10:16:56 25 MR. KAMBER: AS INSTRUCTIVE.

10:16:57 1 THE COURT: SO I SHOULD LOOK AT THE '678 AS  
10:17:00 2 INSTRUCTIVE AS WELL.

10:17:01 3 MR. KAMBER: I BELIEVE SO, YOUR HONOR.

10:17:01 4 THE COURT: AND I HAVE THAT -- SORRY, I DON'T RECALL,  
10:17:04 5 DID YOU GIVE ME --

10:17:05 6 MR. KAMBER: I THINK THE '678 PATENT IS INDEED PART  
10:17:07 7 OF THE RECORD AND PRESENTED AS PERHAPS ONE OF THE EXHIBITS.

10:17:13 8 THE COURT: YOU KNOW, I DON'T RECALL. OBVIOUSLY, I  
10:17:15 9 CAN'T MANAGE ALL OF THIS RIGHT HERE. BUT IF YOU COULD JUST  
10:17:18 10 MAKE A NOTE, AND IF IT'S NOT, YOU COULD JUST SUBMIT IT.

10:17:21 11 MR. KAMBER: ABSOLUTELY, YOUR HONOR.

10:17:22 12 THIS IS A QUOTE FROM THE ABSTRACT OF THAT '678 PATENT.  
10:17:26 13 AND IT TALKS ABOUT THE POSITIONS OF BALLOONS. THE IDEA IS,  
10:17:30 14 IT'S THE POSITIONS OF BALLOONS IN A COMMUNICATION NETWORK OF  
10:17:35 15 BALLOONS, AND ADJUSTING THOSE RELATIVE TO ONE ANOTHER IN ORDER  
10:17:38 16 TO MAINTAIN A DESIRED NETWORK TOPOLOGY.

10:17:41 17 I BRING THIS UP BECAUSE IT IS ABOUT POSITION. WHERE TO  
10:17:44 18 POSITION A BALLOON. THIS DOESN'T COME FROM NOWHERE, IT'S NOT  
10:17:48 19 AN IMPORTED LIMITATION. IT'S AN EFFORT TO DEFINE SOMETHING  
10:17:54 20 THAT IS A LITTLE BIT VAGUE, AS YOU NOTE, DESIRED MOVEMENT.  
10:17:57 21 WHAT DOES THAT MEAN?

10:17:59 22 WELL, REALLY FUNDAMENTALLY, WE ARE TALKING ABOUT WHERE TO  
10:18:01 23 POSITION A BALLOON. AS SPACE DATA PUTS IT, WHERE SHOULD IT BE  
10:18:05 24 MOVED TO? THAT IS WHERE TO POSITION A BALLOON.

10:18:09 25 WE SEE THIS ON THE NEXT SLIDE AS WELL, THIS IS AGAIN A

1 QUOTE FROM THE '678 PATENT, THAT EQUATES THE DESIRED MOVEMENT  
2 WITH WHERE TO POSITION. IT SAYS, THE ADJUSTMENT IN THE  
3 POSITION INVOLVES DETERMINING A DESIRED MOVEMENT.

4 IT'S ESSENTIALLY EQUATING THOSE IDEA, THAT IS THE DESIRED  
5 MOVEMENT IS TO ADJUST THE POSITION TO MOVE THE BALLOON BACK TO  
6 WHERE IT BELONGS. THIS SHOULD ACTUALLY BE RELATIVELY  
7 NONCONTROVERSIAL IN TERMS OF THE WAY OF EXPLAINING TO THE LAY  
8 JURY THE DESIRED MOVEMENT.

9 THE COURT: I'M A LITTLE CONCERNED ABOUT SPACE DATA'S  
10 ARGUMENT THAT YOUR CONSTRUCTION READS OUT DEPENDENT CLAIMS 7, 8  
11 AND 9 WHERE "MOVEMENT" APPEARS TO BE DEFINED AS "DIRECTION OF  
12 MOVEMENT, VELOCITY OR DISTANCE OF TRAVEL."

13 MR. KAMBER: RIGHT.

14 THE COURT: SO YOU DIDN'T GET TO RESPOND TO THAT  
15 BECAUSE IT WAS IN HIS REPLY, BUT WHAT'S YOUR --

16 MR. KAMBER: WITH RESPECT TO THAT, DESIRED MOVEMENT,  
17 WHERE TO POSITION IS A DIFFERENT QUESTION THAN HOW TO POSITION,  
18 I THINK.

19 AND ON THOSE THINGS, WE ARE NOT SAYING THAT YOU COULDN'T  
20 HAVE A DESIRED MOVEMENT, BUT THOSE SUBSEQUENT DEPENDENT CLAIMS  
21 WOULDN'T BE ENCOMPASSED OR CONFLICT SOMEHOW WITH THE CLAIM  
22 CONSTRUCTION.

23 WE ARE ACTUALLY AGREEING WITH SPACE DATA ON THIS POINT.  
24 THAT IS, WHERE TO POSITION CAN BE FURTHER INFLUENCED IN TERMS  
25 OF HOW TO POSITION.

10:19:34 1 THAT IS, IF I KNOW I WANT TO GET MY BALLOON TO A  
10:19:37 2 PARTICULAR SPOT, I'M GOING TO TRY TO USE WITHSTANDS OF A  
10:19:43 3 PARTICULAR SPEED AND OF A PARTICULAR DIRECTION TO GET THERE.

10:19:48 4 AND FRANKLY, YOUR HONOR, I THINK IF WE COULD GO BACK TO  
10:19:50 5 THE SLIDE.

10:19:52 6 THE COURT: WELL I GUESS, BUT LET'S JUST NOT MOVE  
10:19:54 7 QUITE YET, BECAUSE I'M LOOKING AT CLAIM ONE.

10:19:57 8 MR. KAMBER: THIS IS WHAT I WANTED TO PUT UP ON THE  
10:19:59 9 SCREEN, CLAIM ONE.

10:20:02 10 THE COURT: OH, YOU ARE DOING THAT FOR ME BECAUSE THE  
10:20:05 11 PRINT IS BIGGER.

10:20:06 12 CLAIM ONE IS DETERMINING THE DESIRED MOVEMENT OF THE  
10:20:09 13 TARGET BALLOON. AND CLAIM SEVEN IS THE METHOD OF CLAIM ONE,  
10:20:13 14 WHEREIN THE DESIRED MOVEMENT OF THE TARGET BALLOON COMPRISES A  
10:20:18 15 DESIRED DIRECTION. SO THAT'S A LIMITATION OF ONLY DIRECTION  
10:20:22 16 BEING THE DEFINITION OF DESIRED MOVEMENT.

10:20:26 17 SO IT'S THE FORM OF MOVEMENT, NOT THE LOCATION, IS THE  
10:20:28 18 SUBJECT MATTER OF THE DEPENDENT CLAIM.

10:20:34 19 MR. KAMBER: YES.

10:20:34 20 BUT YOUR HONOR, I WOULD SUBMIT THAT THAT CLAIM LANGUAGE  
10:20:38 21 RELATES TO THE LAST ELEMENT OF CLAIM ONE.

10:20:40 22 IF YOU LOOK AT IT, THE QUESTION IS, RIGHT, WHERE IS THE  
10:20:46 23 BALLOON? WHERE ARE THE OTHER BALLOONS? WHERE DO I WANT TO  
10:20:49 24 MOVE THE BALLOON, AND THEN CONTROLLING THE BALLOON BASED ON THE  
10:20:55 25 DESIRED MOVEMENT OF THE TARGET BALLOON.



10:20:58 1 WHAT WE ARE TRYING TO CONSTRUE IS WHAT IS THE DESIRED  
10:21:00 2 MOVEMENT? THAT IS, WHERE DO YOU WANT IT TO GO? AND THIS LAST  
10:21:04 3 PART IS, HOW DO YOU CONTROL THAT?

10:21:06 4 WELL, IN THAT SITUATION, YOU COULD CONTROL THE DIRECTION,  
10:21:09 5 YOU COULD CONTROL THE SPEED.

10:21:12 6 I WOULD SUBMIT THOSE DEPENDENT CLAIMS ARE ACTUALLY  
10:21:16 7 RELATING TO THE WAY IN WHICH YOU DECIDE TO MOVE THE BALLOON,  
10:21:19 8 ONCE YOU DECIDE WHERE YOU WANT TO MOVE IT TO.

10:21:21 9 THE COURT: WELL, YOU CERTAINLY NEED TO KNOW WHAT  
10:21:22 10 YOUR END GAME IS BEFORE YOU CAN HAVE YOUR METHOD OF ACHIEVING  
10:21:26 11 IT.

10:21:26 12 MR. KAMBER: THAT'S EXACTLY RIGHT.

10:21:27 13 THE COURT: OKAY.

10:21:28 14 MR. KAMBER: AND I THINK THAT'S THE WAY THE CLAIM IS  
10:21:30 15 WRITTEN. AND, I MEAN, THAT'S THE LOGIC OF THE CLAIM, REALLY,  
10:21:33 16 ULTIMATELY.

10:21:37 17 THERE IS ANOTHER ISSUE, I THINK, THAT THEY RAISE, AND THIS  
10:21:39 18 ONE IS RELATIVELY QUICK. THEY TALK ABOUT "BASED ON," THE CLAIM  
10:21:45 19 LANGUAGE USES THE TERM "BASED ON," WE USE "FUNCTION OF."

10:21:50 20 AND MR. HOSIE, HIMSELF, DISCUSSING THIS MORNING THE  
10:21:55 21 DIFFERENT PATENTS, SAID, WELL, THE CONFIGURATION OF THE ARRAY  
10:21:58 22 IS A FUNCTION OF THE SERVICE YOU WANT TO PROVIDE.

10:22:01 23 THAT'S THE IDEA THAT WE ARE JUST TRYING TO CAPTURE. AND  
10:22:03 24 HERE, THE SPECIFICATION, AGAIN, OF THE '678 PATENT, IS EQUATING  
10:22:08 25 THIS IDEA THAT THE DESIRED MOVEMENT IS BASED ON, THAT IS, IT IS

1 A FUNCTION OF THE DETERMINED LOCATIONS OF THE OTHER BALLOONS.

2 THIS IS COMING STRAIGHT FROM THE INTRINSIC RECORD OF THIS  
3 CASE.

4 THE COURT: FROM THE '678. SO THEN THE QUESTION GETS  
5 TO BE HOW MUCH IS THE '193 BOUND BY THE '678. AND THAT'S A  
6 LITTLE BIT DIFFICULT OF A QUESTION TO ANSWER.

7 MR. KAMBER: THAT IS A -- IT IS A DIFFICULT QUESTION  
8 TO ANSWER. I THINK IF THE '193 PATENT SPEAK MORE TO THE ISSUE,  
9 THERE WOULD BE MORE TO GO TO.

10 THE COURT: SURE.

11 MR. KAMBER: I THINK BOTH PARTIES HAVE RELIED ON THE  
12 '678 BECAUSE THE WAY THIS HAS HAPPENED IS THERE IS A LOT OF  
13 DETAIL IN THE '678 AS TO THESE CLAIMS, THEN THE INTERFERENCE  
14 PROCEEDINGS STARTED.

15 THEY POINTED TO SOME DISCLOSURE IN AN EARLIER APPLICATION  
16 THAT MIGHT SUPPORT THOSE CLAIMS IN ORDER TO ESSENTIALLY GET THE  
17 CLAIMS WRITTEN FOR THEMSELVES.

18 BUT THERE'S NOT A LOT IN THE '193 PATENT THAT REALLY  
19 RELATES TO THE PARTICULAR CLAIM LANGUAGE THAT WE HAVE GOING ON  
20 HERE, YOUR HONOR.

21 I WANT TO ADDRESS AS MY LAST POINT WHAT YOU JUST FLAGGED,  
22 WHICH IS YOU NEED TO KNOW THE GAME PLAN. AND THAT IS WHERE WE  
23 GET THAT TERMINOLOGY ABOUT MAINTAINING A NETWORK TOPOLOGY.

24 HERE WE HAVE IT FROM, AGAIN, THE '678 PATENT. THE POINT  
25 OF THESE CLAIMS WAS TO COMPARE THE CURRENT TOPOLOGY TO THE

10:23:47 1 DESIRED TOPOLOGY. AND THEN DETERMINE HOW TO MOVE BALLOONS TO  
10:23:51 2 GET TO THE DESIRED TOPOLOGY.

10:23:52 3 THE COURT: SO DO YOU KNOW WHAT NETWORK TOPOLOGY  
10:23:55 4 MEANS? IT'S NOT A TERM I'VE EVER USED IN MY LIFE. I ACTUALLY  
10:23:58 5 DON'T KNOW EXACTLY WHAT YOU MEAN BY THAT.

10:24:00 6 MR. KAMBER: I THINK IT'S A FAIR QUESTION. I THINK  
10:24:02 7 IT'S DESCRIBED ACTUALLY ON THIS NEXT SLIDE, YOUR HONOR.

10:24:05 8 THE COURT: OKAY, BECAUSE MAYBE WE NEED TO BREAK THAT  
10:24:07 9 DOWN A LITTLE BIT IF WE ARE TRYING TO DEFINE IT FOR THE JURY.

10:24:12 10 MR. KAMBER: THAT IS A FAIR POINT, AND THIS IS AGAIN,  
10:24:14 11 FROM THE '678 PATENT. IT TALKS ABOUT APPROACHES FOR  
10:24:18 12 MAINTAINING A DESIRED NETWORK TOPOLOGY.

10:24:20 13 AND AGAIN, WE HAVE HERE, "THE POSITIONS OF BALLOONS IN A  
10:24:23 14 HIGH-ALTITUDE BALLOON NETWORK, MAY BE ADJUSTED IN ORDER TO  
10:24:27 15 MAINTAIN A DESIRED NETWORK TOPOLOGY."

10:24:30 16 OKAY. WE HAVE SOMETHING THAT WE ARE STRIVING FOR, SOME  
10:24:34 17 POSITIONING WE WANT, BUT IT GOES TO ON TO EXPLAIN, THERE ARE  
10:24:38 18 DIFFERENT THINGS THAT YOU MIGHT DESIRE.

10:24:39 19 FOR EXAMPLE, YOU MIGHT WANT A PARTICULAR DENSITY. YOU  
10:24:42 20 MIGHT WANT AN ARRANGEMENT OF PARTICULAR TYPES OF BALLOONS,  
10:24:46 21 SUPER-NODES VERSUS SUB-NODES. YOU MAY BE CONTROLLING FOR THE  
10:24:51 22 NUMBER OF HOPS BEHIND BALLOONS.

10:24:53 23 WE ARE TRYING TO USE THE BROADEST IDEA NETWORK TOPOLOGY TO  
10:24:59 24 CAPTURE ANY OF THESE --

10:25:00 25 THE COURT: BUT I DON'T KNOW WHAT A NETWORK TOPOLOGY

10:25:03 1 IS. I'M SORRY, I'M REALLY BASIC HERE.

10:25:07 2 MR. KAMBER: I THINK THE BEST ILLUSTRATION I COULD  
10:25:08 3 GIVE WAS THE FIGURE WITH THOSE SEVEN BALLOONS AT THE BEGINNING,  
10:25:12 4 THAT THERE IS SOME KIND OF SHAPE TO THE BALLOONS, THERE IS SOME  
10:25:17 5 KIND OF ARRANGEMENT, IT'S WHY PROBABLY THESE ARE CALLED THE  
10:25:21 6 CONSTELLATION OF BALLOONS, THAT THERE'S SOME KIND OF FORMATION.

10:25:25 7 THE COURT: SO "FORMATION" WAS WHAT I WAS THINKING  
10:25:27 8 TOO. I KNOW YOU'VE TAKEN THIS TERM RIGHT FROM THE '678, AND  
10:25:33 9 THAT'S GREAT BECAUSE YOU ARE NOT TRYING TO READ SOMETHING MORE  
10:25:36 10 INTO IT, YOU JUST TRANSPORT IT.

10:25:39 11 BUT IF I TELL A JURY TO MAINTAIN NETWORK TOPOLOGY, I AM  
10:25:45 12 STILL SCRATCHING MY HEAD. I'M GUESSING WHAT IT MEANS. AND  
10:25:49 13 THAT'S A BAD CONSTRUCTION BECAUSE I COULD HAVE EIGHT DIFFERENT  
10:25:52 14 VIEWS OR ZERO VIEWS OF WHAT IT IS, AND THEY JUST COMPLETELY  
10:25:57 15 IGNORE IT.

10:25:58 16 MR. KAMBER: I THINK THAT'S A GOOD WORD, FRANKLY, IS  
10:26:00 17 "FORMATION," TO SAY "A DESIRED FORMATION."

10:26:03 18 AND AGAIN, WE WERE TRYING TO KEEP THIS BROAD, BUT I DO  
10:26:07 19 THINK THAT THE GOAL OF THE PATENT CLAIM ITSELF IS TALKING  
10:26:12 20 ABOUT, I MEAN, THIS IS THE VERY HEART OF IT, IT'S NOT IMPORTING  
10:26:16 21 A LIMITATION, IT'S THE WHOLE IDEA OF MOVING BALLOONS IN THIS  
10:26:19 22 WAY, RELATIVE TO THEIR POSITIONS OF OTHER BALLOONS IS TO  
10:26:23 23 MAINTAIN SOME FORMATION.

10:26:26 24 IN SPACE DATA'S INTERFERENCE PROCEEDING, AND THIS IS PART  
10:26:29 25 OF THE INTRINSIC RECORD, IT'S PART OF THE PROSECUTION HISTORY

1 WE HAVE ON THE NEXT SLIDE HERE, THEIR IDEA AT THE TIME, WHAT  
2 THEY POINTED TO IN THEIR SPEC WAS EVEN SPACING. WE ARE NOT  
3 TRYING TO LIMIT IT TO THAT.

4 THE COURT: YEAH.

5 MR. KAMBER: BUT MAINTAINING SOME DESIRED FORMATION,  
6 I THINK IS A GOOD, THAT MAY BE A GOOD WAY TO FURTHER EDIT THE  
7 LANGUAGE THAT WE HAVE HERE ON THE NEXT SLIDE, TO CLOSE WITH.

8 AGAIN, DETERMINING WHERE TO POSITION A PARTICULAR BALLOON,  
9 YOU COULD EVEN JUST SAY A BALLOON, PROBABLY, AS A FUNCTION OF  
10 ITS LOCATION, RELATIVE TO ONE OR MORE NEIGHBORING BALLOONS, TO  
11 MAINTAIN A DESIRED FORMATION, OR NETWORK FORMATION.

12 THE COURT: WELL, I MEAN, WE ARE STILL, WE STILL  
13 HAVE -- I'M NOT ADOPTING THE LIMITATIONS, I'M JUST TRYING TO --  
14 IF I AGREE WITH YOUR LANGUAGE, THAT NEEDED TO BE ADDRESSED.

15 I'M STILL -- YOU KNOW, I'M -- I GUESS I THINK THE MAIN  
16 ISSUE HERE IS THIS NETWORK, THIS DESIRED MOVEMENT ISSUE, AS TO  
17 WHETHER YOU'RE CONSTRICTING IT IN A WAY THAT IT SHOULDN'T BE ON  
18 LOCATION.

19 BUT I DON'T KNOW HOW TO READ "LOCATION" OUT OF THIS CLAIM  
20 AND HAVE ANY MEANING AT ALL. BECAUSE THE WHOLE ISSUE, I MEAN,  
21 IT SEEMS TO ME, MR. HOSIE WILL TELL ME DIFFERENTLY, THAT THE  
22 WHOLE IDEA IS THIS, THERE ARE RELATIVE POSITIONS OF THESE  
23 BALLOONS THAT ARE ESSENTIAL FOR NETWORK OR WHATEVER COVERAGE ON  
24 THE GROUND.

25 MR. KAMBER: RIGHT.

10:28:15 1 THIS IS AN ODD WAY TO PUT IT PERHAPS, YOUR HONOR, I THINK  
10:28:18 2 THIS LIMITATION COMES FROM THE DESIRE THAT'S REFERENCED IN THE  
10:28:23 3 CLAIM, RIGHT. THE CLAIM IS TALKING ABOUT A DESIRED MOVEMENT.

10:28:28 4 THE COURT: DESIRED, RIGHT.

10:28:29 5 MR. KAMBER: AND IT'S TALKING ABOUT DESIRED  
10:28:32 6 POSITIONS, AND IT'S LOOKING AT THE POSITIONS OF BALLOONS AND  
10:28:35 7 THEN PICKING A DESIRED MOVEMENT.

10:28:36 8 THE COURT: SO MOVEMENT.

10:28:38 9 MR. KAMBER: WHAT DRIVES THAT DESIRE.

10:28:39 10 THE COURT: IS IT BETTER TO THINK OF THE WORD  
10:28:41 11 "MOVEMENT" AS REPOSITIONING, DETERMINING A REPOSITIONING OF THE  
10:28:45 12 TARGET BALLOON? AS A WAY OF MAYBE DEALING WITH ALL OF IT AND  
10:28:50 13 NOT GOING STRICTLY TO "LOCATION," WHICH SEEMS TO BE A  
10:28:54 14 ROADBLOCK?

10:28:57 15 MR. KAMBER: I THINK THAT COULD WORK.

10:28:59 16 THE ONLY THING THAT COMES TO MIND, YOUR HONOR, IS THAT YOU  
10:29:02 17 CAN IMAGINE A SITUATION WHERE THE BALLOONS ARE GOING THROUGH  
10:29:06 18 THIS ALGORITHM, AND ACTUALLY MAKING A DETERMINATION THAT THEY  
10:29:10 19 DON'T NEED TO MOVE, THAT BALLOON A IS RIGHT WHERE IT SHOULD BE.  
10:29:16 20 AND ALTHOUGH, I GUESS PERHAPS THAT WOULDN'T --

10:29:18 21 THE COURT: MOVEMENT IS NOT STATIC EITHER, IT'S THE  
10:29:21 22 OPPOSITE OF STASIS. SO I DON'T AGREE WITH THAT.

10:29:29 23 THESE BALLOONS ARE IN CONSTANT MOVEMENT THOUGH, THAT I  
10:29:33 24 LEARNED LAST WEEK. SO THERE'S NOTHING STATIC ABOUT THIS. AND  
10:29:36 25 THE GOAL IS THAT THEY MOVE ESSENTIALLY IN TANDEM, UP AND DOWN

10:29:40 1 IN THIS CIRCULAR MOTION. BECAUSE OF THE NATURAL WIND FORCE,  
10:29:46 2 THE PREVAILING WIND IS GOING TO MOVE THEM TOGETHER IN A  
10:29:49 3 DIRECTION. BUT THEIR RELATIVE HEIGHTS MAY MAKE THINGS GOING  
10:29:57 4 ASKEW, AND THEY ARE GOING TO BE REPOSITIONING FOR THE WIND  
10:30:00 5 CONDITION AND REPOSITIONING THEMSELVES VIS A VI EACH OTHER WITH  
10:30:04 6 ALL OF THAT.

10:30:06 7 SO ANYWAY, I NEED -- MAYBE YOU ALL NEED TO SIT DOWN AND  
10:30:09 8 THINK ABOUT WHETHER THAT'S A WAY OF GETTING OVER THE LOCATION  
10:30:13 9 PROBLEM THAT SEEMS TO BE THE BIGGEST STUMBLING BLOCK HERE.

10:30:22 10 AND I MEAN, CLEARLY MAINTAINING A NETWORK FORMATION, I'M  
10:30:27 11 NOT SURE THAT THAT ADDS ANYTHING, BECAUSE THAT DOES SEEM TO BE  
10:30:34 12 THE WHOLE PURPOSE OF THE PATENT.

10:30:36 13 MR. KAMBER: IT IS THE PURPOSE OF THE PATENT, OR THE  
10:30:39 14 CLAIMS, I THINK. BUT IT IS THE TERM, OR IT'S THE LIMITATION  
10:30:43 15 THAT RELATES TO THE DESIRED MOVEMENT. OTHERWISE, IT'S JUST  
10:30:47 16 SAYING "MOVING BALLOONS."

10:30:48 17 THE COURT: RIGHT.

10:30:49 18 MR. KAMBER: ANYONE WOULD BE MOVING BALLOONS, BUT  
10:30:51 19 POTENTIALLY, THE BALLOONS MOVE ON THEIR OWN. BUT IF YOU'RE  
10:30:56 20 MOVING THEM FOR A PARTICULAR PURPOSE, USING THIS ALMOST LIKE AN  
10:31:00 21 ALGORITHM THAT'S SET FORTH IN METHOD CLAIM ONE, THEN THE  
10:31:04 22 MOVEMENT NEEDS TO BE DEFINED BY SOMETHING, FOR SOMETHING, WITH  
10:31:08 23 THE GOAL IN MIND.

10:31:10 24 AGAIN, THAT'S THE DESIRE THAT'S CAPTURED IN TERMS OF BOTH  
10:31:14 25 DESIRED MOVEMENT, DETERMINING THE DESIRED MOVEMENT AND THEN

10:31:21 1 CONTROLLING THAT BALLOON FOR PURPOSES OF THE DESIRED MOVEMENT.

10:31:24 2 THE COURT: OKAY.

10:31:25 3 WELL, I'M PROBABLY GOING TO SEND YOU BACK TO THE DRAWING  
10:31:28 4 BOARD ON THIS ONE AND HOPE YOU CAN COME UP WITH AN AGREED  
10:31:33 5 CONSTRUCTION. I'M NOT -- I'M HOPING THAT MAYBE THERE'S A  
10:31:37 6 MIDDLE GROUND HERE.

10:31:41 7 MR. HOSIE?

10:31:42 8 MR. HOSIE: YOU KNOW, YOUR HONOR, HOPE ALWAYS SPRINGS  
10:31:45 9 ETERNAL, AND YOU CAN'T GO WITHOUT BEING OPTIMISTIC IN LIFE AND  
10:31:50 10 IN LAW, BUT I THINK THERE IS MIDDLE GROUND.

10:31:53 11 THEY HAVE MOVED CONSIDERABLY TO WHAT WE WOULD CONSIDER A  
10:31:56 12 FAIR APPROACH. I LIKE THE COURT'S SUGGESTION OF  
10:31:58 13 "REPOSITIONING" BECAUSE THAT IS AN UMBRELLA TERM THAT CABINS  
10:32:03 14 THE BASIC IDEA WITHOUT IMPORTING THE WHY'S AND THE WHEREFORE'S.  
10:32:09 15 ON NETWORK TOPOLOGY, THAT WOULD HAVE TO BE CONSTRUED.

10:32:12 16 NO ONE WOULD KNOW IN THE JURY BOX WHAT A NETWORK --

10:32:15 17 THE COURT: SO MR. KAMBER SUGGESTS "FORMATION."

10:32:18 18 MR. HOSIE: OR "ARRAY."

10:32:19 19 THE COURT: YOU KNOW, WELL, "ARRAY" IS A PRETTY  
10:32:23 20 COMMON WORD, BUT I HAD TO LEARN IT WHEN I FIRST STARTED OUT.

10:32:27 21 SO IT'S -- YOU KNOW, I THINK A FIRST-YEAR COLLEGE STUDENT  
10:32:30 22 IN ENGINEERING WOULD UNDERSTAND IT, SO THE LEVEL OF SKILL ISN'T  
10:32:33 23 VERY HIGH, BUT IF WE ARE ACTUALLY -- I DON'T KNOW WHY "ARRAY"  
10:32:37 24 AND "FORMATION" ARE -- BECAUSE THIS REALLY, THIS REALLY IS A  
10:32:43 25 FORMATION, AND IT SEEMS TO ME THAT'S A GOOD WORD.



1 MR. HOSIE: I TAKE THE COURT'S POINT, AND YOU KNOW,  
2 IT'S NOT GIVING ME HEARTBURN AT ALL TO CALL IT FORMATION, WE  
3 DISCUSS IN OUR OFFICE, AND I'M SURE THAT'S THE WORD WE WOULD  
4 USE.

5 THE LAST POINT I WOULD MAKE BACK ON SLIDE 26, THESE  
6 DEPENDENT CLAIMS SPECIFY SUB-PARTICULAR TYPES OF MOVEMENTS,  
7 DIRECTION OF MOVEMENT, DESIRED VELOCITY, DESIRED DISTANCE OF  
8 TRAVEL. THESE HAVE TO BE ENCOMPASSED BY INDEPENDENT CLAIM ONE.  
9 AND UNDER GOOGLE'S READING, THEY ARE READ OUT, AND THAT CAN'T  
10 BE READ AS A MATTER OF LAW.

11 THE COURT: SO WHAT PART, IF WE CHANGE TO  
12 "REPOSITIONING," BECAUSE YOU DIDN'T GIVE ME ANYTHING, IF WE  
13 CHANGE TO "REPOSITIONING," I MEAN, I THINK WITH SOME OF THIS,  
14 AND CHANGE "TOPOLOGY" TO "FORMATION," I DON'T THINK YOU'RE SO  
15 FAR APART ANYMORE.

16 MR. HOSIE: AGREED.

17 THE COURT: IF YOU BOTH -- NOW, I AM NOT FORCING  
18 MR. KAMBER TO ACCEPT THESE THINGS NOW, I'M ASKING HIM TO THINK  
19 ABOUT IT.

20 MR. KAMBER: ABSOLUTELY.

21 THE COURT: BECAUSE IT'S NOT FAIR TO ASK YOU TO AGREE  
22 ON THE FLY. YOU'VE GOT TO REALLY SIT DOWN WITH YOUR CLIENTS  
23 AND MAKE SURE, AND YOUR EXPERTS.

24 MR. HOSIE: IT SURE SOUNDS DOABLE TO ME, YOUR HONOR.

25 THE COURT: SO I THINK THAT MAY BE DOABLE.

10:33:54 1 OKAY. BEFORE WE GO TO THE NEXT TERM, I WANT TO TAKE A  
10:33:57 2 BREAK. THIS GETS TO BE A LONG SESSION FOR OUR COURT REPORTER.  
10:34:00 3 SO LET'S COME BACK IN TEN MINUTES.

10:34:02 4 MR. HOSIE: THANK YOU.

10:34:03 5 (RECESS FROM 10:34 A.M. UNTIL 10:42 A.M.)

10:42:28 6 THE COURT: WE ARE BACK ON THE RECORD.

10:42:59 7 OKAY. WE ARE GOING TO JUST KEEP MOVING BECAUSE EVERYBODY  
10:43:02 8 WOULD LIKE TO BE DONE ON THIS FRIDAY.

10:43:14 9 ALL RIGHT. "NETWORK OF BALLOONS," IS THAT THE NEXT TERM?

10:43:17 10 MR. MARTIN: IT IS, YOUR HONOR.

10:43:19 11 BRANDON MARTIN AGAIN, ARGUING FOR SPACE DATA.

10:43:24 12 YOUR HONOR, "MESH NETWORK OF BALLOONS" APPEARS IN THE TWO  
10:43:30 13 CLAIMS OF THE '193 PATENT, CLAIM 4 AND CLAIM 17. THERE'S NOT  
10:43:36 14 TOO MUCH TO DERIVE FROM THAT FACT. BUT WHAT IS INTERESTING IS  
10:43:40 15 THAT THE PARTIES HAVE A FAIR BIT, I THINK, OF COMMON GROUND.

10:43:43 16 THE COURT: OH, GOOD.

10:43:44 17 MR. MARTIN: ON THIS CLAIM.

10:43:48 18 I THINK THE PARTIES BOTH AGREE THAT A MESH NETWORK IS  
10:43:52 19 SOMETHING THAT EMBODIES DYNAMISM, IT ALLOWS FOR CHANGING  
10:43:58 20 CIRCUMSTANCES. SO HERE WE HAVE A HIKER OUT IN LOS ALTOS HILLS  
10:44:03 21 AND SHE NEEDS CELL SERVICE IN SAN JOSE. SO WE PROVIDE SOME  
10:44:07 22 BALLOONS AND WE CAN PASS HER SIGNAL FROM BALLOON, TO BALLOON,  
10:44:10 23 TO BALLOON, BACK TO A GROUND STATION IN SAN JOSE.

10:44:13 24 NOW, I THINK GOOGLE EVEN WOULD AGREE THAT UNDER ITS  
10:44:20 25 CONSTRUCTION, WHICH IT HAS PROPOSED TWO NOW --

10:44:23 1 THE COURT: SO I'M GOING TO DEAL WITH THE  
10:44:25 2 CONSTRUCTION IN THEIR RESPONSIVE BRIEF. I ASSUME THAT'S THE  
10:44:28 3 MOST RECENT ITERATION; IS THAT CORRECT?

10:44:33 4 MR. BRUNS: MOSTLY, YOUR HONOR, WE HAVE SINCE  
10:44:35 5 ATTEMPTED A COMPROMISE, WHICH I WILL TOUCH ON.

10:44:37 6 THE COURT: SO THERE'S GOING TO BE YET A THIRD?

10:44:40 7 MR. BRUNS: THERE WILL BE.

10:44:40 8 THE COURT: YOU KNOW WHAT, CONTINUING TO WORK ON IT  
10:44:43 9 MUST BRING YOU CLOSER TOGETHER.

10:44:44 10 MR. MARTIN: AND THAT'S WHERE IT COMES FROM,  
10:44:46 11 YOUR HONOR, BOTH PARTIES AGREE THAT THE MESH NETWORK OF  
10:44:49 12 BALLOONS MUST BE DYNAMIC.

10:44:50 13 SO I THINK EVEN GOOGLE WOULD AGREE THAT THESE THREE  
10:44:53 14 BALLOONS IN THE FOREGROUND ARE IN A MESH NETWORK, UNDER EITHER  
10:44:58 15 PARTY'S CONSTRUCTION.

10:44:58 16 THE COURT: SAY THAT AGAIN, I'M SORRY.

10:45:00 17 MR. MARTIN: I THINK EVEN GOOGLE WOULD AGREE THAT  
10:45:02 18 THESE THREE BALLOONS IN THE FOREGROUND ARE IN A MESH NETWORK OF  
10:45:06 19 BALLOONS.

10:45:07 20 NOW, BALLOONS CAN GO OUT OF SERVICE FOR VARIOUS REASONS,  
10:45:12 21 RIGHT. THEY CAN BURST, THEY CAN HAVE MECHANICAL PROBLEMS. THE  
10:45:16 22 TRANSCEIVER COULD DIE. THERE'S LOTS OF REASONS THAT BALLOONS  
10:45:19 23 COULD GO OUT OF SERVICE.

10:45:20 24 SO THE DYNAMISM OF A MESH NETWORK ALLOWS THE BALLOONS  
10:45:26 25 WHICH CAN COMMUNICATE WITH ONE ANOTHER, TO SIMPLY MOVE AROUND

10:45:30 1 AND REFORM THE LINKS.

10:45:32 2 NOW YOUR HONOR --

10:45:32 3 THE COURT: WHICH IS, IN FACT, AN ELEMENT OF  
10:45:36 4 REDUNDANCY.

10:45:39 5 MR. MARTIN: BEING ABLE TO COMMUNICATE WITH ONE  
10:45:42 6 ANOTHER ALLOWS FOR REDUNDANCY, YOUR HONOR.

10:45:46 7 BUT THERE'S NO REDUNDANT LINKS NOW ON THIS NETWORK. THE  
10:45:50 8 BALLOONS HAVE THE SAME CAPABILITY, BUT THEY ARE NO LONGER, THE  
10:45:54 9 SAME CAPABILITY TO COMMUNICATE WITH EACH OTHER, BUT THERE ARE  
10:45:58 10 NO OTHER ANY REDUNDANT LINKS.

10:46:00 11 AND ACCORDING TO GOOGLE, THIS NOW IS NO LONGER A MESH  
10:46:04 12 NETWORK. JUST BY VIRTUE OF LOSING ONE BALLOON FROM THE  
10:46:08 13 NETWORK, THIS IS NO LONGER A MESH NETWORK.

10:46:10 14 THE COURT: SO YOU ARE SAYING NOW IF YOU LOST A  
10:46:12 15 SECOND BALLOON, YOU WOULD NOT HAVE COVERAGE.

10:46:16 16 MR. MARTIN: THAT'S CORRECT, YOUR HONOR, BECAUSE THEY  
10:46:17 17 WOULD BE TOO FAR APART, YOU WOULD LOSE YOUR COMMUNICATIONS.

10:46:25 18 DR. HANSMAN AGREES THAT BALLOONS WITHIN THE SYSTEM MUST BE  
10:46:29 19 CAPABLE OF COMMUNICATING WITH MULTIPLE OTHER BALLOONS WITHIN  
10:46:32 20 THE SYSTEM.

10:46:33 21 AND IN FACT, IN FOOTNOTE, I BELIEVE IT'S 16 OF ITS BRIEF  
10:46:45 22 ON PAGE 20, GOOGLE SAYS THAT SPACE DATA'S CONSTRUCTION  
10:46:52 23 ENCOMPASSES TRUE MESH NETWORKS.

10:46:59 24 GOOGLE'S PROBLEM WITH SPACE DATA'S CONSTRUCTION IS THAT IT  
10:47:01 25 ALSO COVERS SITUATIONS IN WHICH THE BALLOONS CAN ONLY

10:47:08 1 COMMUNICATE WITH ONE OTHER BALLOON.

10:47:10 2 SO UNDER SPACE DATA'S CONSTRUCTION, THIS THREE BALLOON  
10:47:13 3 LINE HERE IS A MESH NETWORK, IT HASN'T STOPPED BEING A MESH  
10:47:18 4 NETWORK BECAUSE A BALLOON HAS DROPPED OUT OF IT. THIS IS STILL  
10:47:21 5 A MESH NETWORK.

10:47:21 6 AND YOUR HONOR, THE PATENTS AGREE, AND SO DOES THE PTAB.  
10:47:28 7 THIS HERE IS A FIGURE, FIGURE 14 FROM THE '193 PATENT. NOW,  
10:47:32 8 THE PTAB, IN EXAMINING ONE OF GOOGLE'S PATENT APPLICATIONS,  
10:47:36 9 REJECTED A GOOGLE CLAIM THAT CITED A HIGH-ALTITUDE BALLOON MESH  
10:47:44 10 NETWORK. AND WHEN IT DID SO, IT CITED THE SPACE DATA PATENT.  
10:47:48 11 THAT'S THE '390 PATENT. THE PORTION CITED BY THE PTO ALSO  
10:47:53 12 APPEARS IN THE '193 PATENT.

10:47:54 13 AND IT TALKS ABOUT THIS PRECISE FIGURE HERE, SPECIFICALLY  
10:48:01 14 THE CITATION HERE BY THE PTO SAYING KNOBLACH DISCLOSES A  
10:48:04 15 HIGH-ALTITUDE BALLOON 12K IN A HIGH-ALTITUDE BALLOON MESH  
10:48:08 16 NETWORK. AND IT CITES COLUMN 30, LINES 48 THROUGH 49. THAT  
10:48:15 17 READS, "FIGURE 14," WHICH THIS IS, "IS A SCHEMATIC DEPICTION OF  
10:48:19 18 INTER-PLATFORM COMMUNICATIONS WITH SUBSEQUENT TRANSMISSION TO A  
10:48:22 19 GROUND TERMINAL."

10:48:23 20 NOW YOUR HONOR, BALLOON 12K HAS NO REDUNDANT COMMUNICATION  
10:48:28 21 LINKS. BALLOON 12K IS -- IT'S EXACTLY THE THREE-BALLOON  
10:48:36 22 SITUATION WE JUST LOOKED AT. AND THE PTO THINKS THIS DISCLOSES  
10:48:41 23 A HIGH-ALTITUDE BALLOON MESH NETWORK.

10:48:43 24 AND FURTHER, IF THIS IS A HIGH-ALTITUDE BALLOON MESH  
10:48:48 25 NETWORK, WHAT ABOUT BALLOON 12J? BALLOON 12J IS ONLY

10:48:56 1 COMMUNICATING WITH BALLOON 12K, IT'S ONLY COMMUNICATING WITH  
10:48:56 2 ONE OTHER BALLOON.

10:48:57 3 AND THE PTO HAS SAID THAT WELL, THIS DISCLOSES A  
10:48:59 4 HIGH-ALTITUDE BALLOON MESH NETWORK, EVEN THOUGH THERE'S ONLY  
10:49:02 5 COMMUNICATION WITH ONE OTHER BALLOON, AND THAT'S BECAUSE THE  
10:49:06 6 BALLOONS CAN COMMUNICATE WITH ONE ANOTHER.

10:49:10 7 THE PART OF THE CITATION TO THE OFFICE ACTION BY THE PTO  
10:49:16 8 THAT'S CUT OFF AT THE END SAYS, THE BALLOON 12K COMPRISES  
10:49:20 9 TRANSCEIVERS FOR COMMUNICATING WITH A CORRESPONDENT. AND AFTER  
10:49:24 10 THAT, I BELIEVE IT SAYS "BALLOON."

10:49:26 11 THAT IS WHAT MAKES A BALLOON, A MESH NETWORK, A MESH  
10:49:30 12 NETWORK IS THE ABILITY TO COMMUNICATE WITH OTHER NODES IN THE  
10:49:35 13 NETWORK.

10:49:35 14 THE COURT: SO LET ME JUST ASK YOU TO SEE IF THERE'S  
10:49:39 15 REALLY A DIFFERENCE HERE.

10:49:40 16 UNDER YOUR CONSTRUCTION AND YOUR DIAGRAM, IF THAT MIDDLE,  
10:49:43 17 IF THAT FOURTH BALLOON MALFUNCTIONS, AND IF THE MALFUNCTION  
10:49:55 18 BALLOON WAS THE ONLY BALLOON THAT ONE OF THE OTHER THREE WAS  
10:49:58 19 ABLE TO COMMUNICATE WITH, SO THEN WE WOULD NOT HAVE A MESH  
10:50:03 20 NETWORK ANYMORE, UNDER YOUR DEFINITION, BECAUSE WE WOULD HAVE A  
10:50:07 21 BALLOON IN THE FORMATION THAT IS NO LONGER CAPABLE OF  
10:50:10 22 COMMUNICATING WITH ONE OR MORE OTHER BALLOONS OF THE NETWORK.

10:50:13 23 SO LET'S TAKE THE BALLOON IN THE VERY FRONT. AND LET'S  
10:50:19 24 SAY IT CAN ONLY COMMUNICATE WITH THE ONE THAT YOU'VE IDENTIFIED  
10:50:22 25 IS MALFUNCTIONING. AND THEN THE MALFUNCTIONING ONE FALLS TO

10:50:30 1 THE GROUND. AND NOW OUR FRONT BALLOON CAN'T COMMUNICATE WITH  
10:50:32 2 ANY OTHER BALLOON, SO THEN WE DON'T HAVE A MESH NETWORK  
10:50:36 3 ANYMORE?

10:50:36 4 MR. MARTIN: YOUR HONOR, YOU DON'T HAVE A NETWORK  
10:50:38 5 ANYMORE. IF THERE'S ONLY ONE NODE, THEN YOU DON'T HAVE A  
10:50:41 6 NETWORK.

10:50:41 7 THE COURT: WELL NO, BECAUSE I'VE JUST LOOKED AT YOUR  
10:50:44 8 SAME THING -- I'M SAYING THAT IF THE FRONT BALLOON IS SHOWN TO  
10:50:48 9 COMMUNICATE WITH THE ONE THAT YOU DREW YOUR LINE THROUGH,  
10:50:52 10 RIGHT, AND IF THAT WAS THE ONLY OTHER BALLOON IN THE NETWORK  
10:50:58 11 THAT THE FRONT BALLOON COULD COMMUNICATE WITH, BUT WE HAD THE  
10:51:02 12 MALFUNCTION, THEN WE DON'T HAVE A NETWORK.

10:51:07 13 MR. MARTIN: SO YOUR HONOR, YES, THAT'S RIGHT.

10:51:08 14 THE COURT: YOU AGREE, OKAY.

10:51:12 15 MR. MARTIN: AND I UNDERSTAND FROM THE HYPOTHETICAL  
10:51:13 16 THAT THE BALLOON ON THE FAR RIGHT OF THE SCREEN DOESN'T EXIST  
10:51:16 17 FOR THE PURPOSE OF THIS HYPOTHETICAL.

10:51:18 18 THE COURT: YEAH, BECAUSE YOU HAD THE ONE ON THE FAR  
10:51:20 19 RIGHT MOVING INTO POSITION. SO YOU'VE GOT COVERAGE, BUT UNDER  
10:51:23 20 YOUR DEFINITION, I'M NOT SURE YOU HAVE A NETWORK.

10:51:25 21 THAT WAS REALLY MY ISSUE. NOW YOU SHOW IT SO THAT IT'S  
10:51:29 22 COMMUNICATING WITH TWO BALLOONS, BUT YOUR CONSTRUCTION IS THAT  
10:51:33 23 IT ONLY NEEDS TO BE CAPABLE OF COMMUNICATING WITH ONE OR MORE.

10:51:39 24 MR. MARTIN: THAT'S CORRECT, YOUR HONOR.

10:51:40 25 THE COURT: SO I'M TRYING TO LOOK AT THE ONE

10:51:42 1 SITUATION.

10:51:42 2 MR. MARTIN: AH.

10:51:43 3 THE COURT: THAT'S MY POINT IS THAT IN YOUR  
10:51:45 4 DEFINITION, WHEN THE BALLOON FELL TO THE GROUND, WE STILL HAD  
10:51:52 5 INTERCONNECTION AMONG THE REMAINING THREE. BUT THAT'S BECAUSE  
10:51:57 6 YOUR FRONT BALLOON HAD TWO PATHWAYS OF COMMUNICATION, WHICH IS  
10:52:02 7 FINE, BECAUSE YOU SAY ONE OR MORE, BUT I NEED TO LOOK AT WHAT  
10:52:05 8 ABOUT IF IT'S THE ONE.

10:52:08 9 MR. MARTIN: SO YOUR HONOR, IN THIS FIGURE THAT THE  
10:52:14 10 PTO HAS SAID CONSTITUTES A MESH NETWORK, BALLOON 12J IS IN  
10:52:19 11 COMMUNICATION WITH ONLY ONE OTHER BALLOON 12K.

10:52:22 12 AND THE PTO HAS SAID -- HAS REJECTED ONE OF GOOGLE'S  
10:52:26 13 PATENT CLAIMS SAYING THIS FIGURE HERE DISCLOSES A HIGH-ALTITUDE  
10:52:31 14 BALLOON MESH NETWORK.

10:52:32 15 THE COURT: OKAY. SO THERE'S NO REDUNDANCY THERE.

10:52:36 16 SO IF THE MIDDLE ONE FAILS, THEN YOU JUST HAVE TWO  
10:52:40 17 FREE-FLOATING BALLOONS THAT ARE USELESS.

10:52:41 18 MR. MARTIN: AND WE DON'T HAVE A NETWORK. THEY ARE  
10:52:43 19 TOO FAR TO COMMUNICATE WITH ONE ANOTHER.

10:52:46 20 THE COURT: OKAY.

10:52:50 21 MR. MARTIN: THIS IS FIGURE 1 FROM GOOGLE'S '678  
10:52:53 22 PATENT FROM WHICH THIS CLAIM ORIGINALLY COMES FROM, THE GOOGLE  
10:52:57 23 '678 PATENT. IT WAS CAPTURED BY SPACE DATA IN THE INTERFERENCE  
10:53:01 24 PROCEEDING. AND ACCORDING TO THE SECTION OF THE '678 PATENT,  
10:53:07 25 THAT IS TITLED "MESH NETWORK FUNCTIONALITY," IT SAYS, BALLOONS



10:53:12 1 102A, WHICH IS THE BALLOON IN THE TOP LEFT OF THIS FIGURE, TO  
10:53:18 2 102F, WHICH IS THE BALLOON IN THE BOTTOM LEFT OF THE FIGURE,  
10:53:21 3 MAY COLLECTIVELY FUNCTION AS A MESH NETWORK.

10:53:24 4 NOW YOUR HONOR, BALLOON 102F IS IN DIRECT COMMUNICATION  
10:53:29 5 WITH ONLY ONE OTHER BALLOON, IT HAS NO REDUNDANT COMMUNICATION  
10:53:35 6 LINKS WITH WHY OTHER BALLOONS.

10:53:36 7 THE COURT: RIGHT.

10:53:37 8 MR. MARTIN: AND MORE REVEALING, IS THE REMAINDER OF  
10:53:39 9 THIS QUOTE.

10:53:41 10 IT SAYS, SINCE BALLOONS 102A TO 102F MAY COMMUNICATE WITH  
10:53:47 11 ONE ANOTHER USING FREE-SPACE OPTICAL LINKS, THE BALLOONS MAY  
10:53:51 12 COLLECTIVELY FUNCTION AS A FREE-SPACE OPTICAL MESH NETWORK.

10:53:55 13 THE IMPORTANT THING, YOUR HONOR, IS THE BALLOONS ARE ABLE  
10:53:57 14 TO COMMUNICATE WITH ONE ANOTHER, AND THAT IS SPACE DATA'S  
10:53:59 15 CONSTRUCTION.

10:54:00 16 THE COURT: SO IT'S A MESH, AS LONG AS ALL THE  
10:54:02 17 BALLOONS IN THE AIR IN THAT FORMATION ARE ABLE TO COMMUNICATE  
10:54:05 18 WITH EACH OTHER.

10:54:06 19 MR. MARTIN: ARE CAPABLE OF COMMUNICATING WITH EACH  
10:54:08 20 OTHER, IF THEY COME WITHIN RANGE OF ONE ANOTHER.

10:54:11 21 THE COURT: ONCE THERE'S A BREAK IN THE CHAIN, THEN  
10:54:12 22 YOU DON'T HAVE --

10:54:13 23 MR. MARTIN: ONCE THE BALLOONS ARE ISOLATED, YOU  
10:54:15 24 CAN'T COMMUNICATE WITH ANY OTHER BALLOONS, IT'S NO LONGER A  
10:54:22 25 NETWORK AT ALL.

10:54:22 1 THE COURT: GOT IT. OKAY.

10:54:27 2 MR. BRUNS: GOOD MORNING, YOUR HONOR. ANDREW BRUNS  
10:54:34 3 FOR THE DEFENDANTS.

10:54:36 4 SO I DO THINK THERE'S QUITE A BIT OF COMMONALITY HERE,  
10:54:39 5 THOUGH I DON'T KNOW THAT ALL OF IT CAME ACROSS IN THE  
10:54:42 6 CONVERSATION WE'VE HAD SO FAR THIS MORNING.

10:54:44 7 I WOULD LIKE TO START WITH OUR TWO PROPOSED CONSTRUCTIONS.  
10:54:48 8 GOOGLE BELIEVES THAT A MESH NETWORK IS A NETWORK --

10:54:51 9 THE COURT: I'M NOT HEARING. I'M SORRY, I'M HAVING  
10:54:54 10 TROUBLE WITH THE MICROPHONE.

10:54:56 11 MR. BRUNS: I'M SORRY. I APOLOGIZE.

10:54:57 12 THE COURT: IT SHOULD PICK UP YOUR VOICE A LITTLE BIT  
10:54:59 13 EASIER.

10:55:03 14 MR. KAMBER: SORRY ABOUT THAT.

10:55:04 15 SO GOOGLE'S PROPOSED CONSTRUCTION IS THAT A MESH NETWORK  
10:55:07 16 IS A NETWORK OF BALLOONS WITH REDUNDANT PATHWAYS FOR ROUTING  
10:55:10 17 DATA BETWEEN THE BALLOONS.

10:55:12 18 AND AS YOUR HONOR PICKED UP, THERE ARE KIND OF TWO THINGS  
10:55:15 19 TO THIS REDUNDANCY, AND ONE IS THE ABILITY FOR THE BALLOONS TO  
10:55:20 20 DYNAMICALLY REROUTE. AND THAT'S ONLY POSSIBLE BECAUSE THERE  
10:55:23 21 ARE MULTIPLE PATHS, REDUNDANT PATHS THAT ARE CAPABLE.

10:55:27 22 SPACE DATA SEEMS TO CONFLATE REDUNDANCY WITH SOME SORT OF  
10:55:32 23 PERMANENCE. THAT'S NOT THE CASE THAT THESE BALLOONS HAVE TO BE  
10:55:35 24 CONNECTED TO ALL THE OTHER BALLOONS AT ALL TIMES, THAT THEY ARE  
10:55:39 25 CAPABLE OF MAKING THAT SHIFT BECAUSE THERE ARE MULTIPLE PATHS.

1 SPACE DATA'S CONSTRUCTION, ON THE OTHER HAND, IS FAR TOO  
2 BROAD. THEY WOULD SIMPLY REQUIRE THAT EACH BALLOON IN THE  
3 NETWORK IS CAPABLE OF COMMUNICATING WITH ONE ANOTHER BALLOON.

4 FIRST OF ALL, THIS ENCOMPASSES NO DYNAMISM, I WOULD ARGUE,  
5 IT SIMPLY REQUIRES THAT ONE BALLOON CAN TALK TO ANOTHER  
6 BALLOON. AND THIS READS "MESH" OUT OF THE ENTIRE TERM. IT  
7 WOULD ENCOMPASS JUST ONE BALLOON TALKING TO ANOTHER BALLOON.  
8 IT WOULD REALLY COVER ANY NETWORK.

9 AND I THINK, I HOPE TO MAKE CLEAR IN THE COMING SLIDES,  
10 THAT GOOGLE'S DEFINITION, THIS NOTION OF MULTIPLE REDUNDANT  
11 PATHS AND DYNAMISM, THOSE ARE THE TWO KEY FEATURES OF A PRETTY  
12 WELL-RECOGNIZED TERM.

13 IF WE CAN GO TO THE NEXT SLIDE. AND FOR WHAT IT'S WORTH,  
14 SPACE DATA'S EXPERT AGREES. HE TESTIFIED THAT "A MESH NETWORK  
15 IS A NETWORK THAT CONNECTS MULTIPLE PARTICIPANTS, SUCH THAT ALL  
16 PARTICIPANTS ARE REACHABLE AND MOST ARE REACHABLE VIA MULTIPLE  
17 PATHS. BUT IF NO BALLOON IS ABLE TO BE REACHED BY MULTIPLE  
18 PATHS THEN THE NETWORK WOULD NOT BE A MESH NETWORK."

19 I THINK THIS IS -- DISTINGUISHES A POINT THAT COUNSEL WAS  
20 TRYING TO MAKE ON THEIR SLIDES 17 AND 18, IT'S NOT THAT EVERY  
21 BALLOON HAS TO HAVE MULTIPLE PATHS, IT'S THAT SOME OF THE  
22 BALLOONS AT THE VERY LEAST HAVE TO HAVE MULTIPLE PATHS.

23 HE ALSO TOUCHED ON THE SECOND POINT, WHICH IS THE DYNAMISM  
24 I MENTIONED EARLIER. AND ON THAT SCORE, HE NOTED THAT, HE  
25 REFERRED TO IT AS A SELF-HEALING CAPABILITY. AND HE NOTED THAT

1 IS PROVIDED BY THE MULTIPLE PATHS BETWEEN SOURCES, WHICH IS  
2 EXACTLY THE POINT YOUR HONOR MADE EARLIER.

3 AND SO I THINK BASED ON DR. PULLEN'S TESTIMONY, HIS  
4 DECLARATION, AND SPACE DATA'S BRIEFING, WE ARE MUCH CLOSER TO A  
5 COMMON DEFINITION THAN MAYBE IT APPEARED AT FIRST.

6 IF WE CAN GO TO THE NEXT SLIDE.

7 THE COURT: SO I WANT TO MAKE SURE THAT WHEN YOU SAY  
8 WE ARE CLOSER TO A COMMON DEFINITION, YOU ARE NOT REALLY  
9 TELLING ME THAT SPACE DATA IS AGREEING WITH YOU.

10 I MEAN, ARE YOU FINDING A MIDDLE GROUND, OR ARE YOU JUST  
11 THINKING THAT YOU'VE BEAT THEM INTO CAPITULATION HERE?

12 MR. BRUNS: I DON'T THINK WE HAVE BEATEN THEM INTO  
13 ANYTHING, YOUR HONOR.

14 THE COURT: SO THERE'S STILL A MIDDLE GROUND YOU ARE  
15 WORKING ON.

16 MR. BRUNS: I HOPE SO, AND I WILL DISCUSS A COUPLE  
17 OPTIONS.

18 THE COURT: I JUST WANT TO BE SURE I'M HEARING YOU  
19 RIGHT.

20 MR. BRUNS: I THINK THEIR REFERENCES TO DYNAMISM ARE,  
21 ASSIGNED TO US, THAT THERE'S BEEN SOME EVOLUTION ON THEIR  
22 POSITION IN OUR DIRECTION, AND I'M HOPING TO FIND COMMON  
23 GROUND.

24 THE COURT: SO ARE YOU TELLING ME THAT YOU ARE GOING  
25 TO TALK ABOUT THIS AND TRY TO GIVE ME -- AND LET ME KNOW

10:58:20 1 WHETHER YOU CAN WORK THIS OUT?

10:58:22 2 MR. BRUNS: WE HOPE TO, YOUR HONOR.

10:58:24 3 THE COURT: GOOD. EXCELLENT. I APPRECIATE THAT.

10:58:26 4 MR. BRUNS: NO PROBLEM.

10:58:27 5 AND IN A FEW MOMENTS, I WILL SHOW YOU A FEW COMPROMISES WE  
10:58:31 6 HAD IN MIND AND HOPEFULLY WE COULD WORK TOGETHER TO FIGURE OUT  
10:58:33 7 A FINAL ANSWER HERE.

10:58:33 8 THE COURT: I LOVED YOUR CITE TO WIKIPEDIA IN THE  
10:58:35 9 BRIEF. IT TELLS ME HOW COMMON IT IS.

10:58:38 10 MR. BRUNS: I'M GLAD THAT WAS COMFORTING.

10:58:41 11 AND IT WASN'T JUST US, IT WAS BOTH EXPERTS, TWO OUT OF TWO  
10:58:45 12 EXPERTS AGREE THAT SPACE DATA AND GOOGLE'S EXPERTS BOTH CITE TO  
10:58:49 13 THIS WIKIPEDIA DEFINITION.

10:58:51 14 AND IT SHARES THESE FACETS THAT I MENTIONED ALREADY,  
10:58:55 15 DYNAMIC, NONHIERARCHICAL, DIRECT CONNECTION BETWEEN AS MANY  
10:59:00 16 NODES AS POSSIBLE.

10:59:03 17 SO HOW DOES THAT LOOK IN PRACTICE? AND WE'VE SEEN SOME  
10:59:08 18 IMAGES IN SPACE DATA'S PRESENTATION, BUT I WOULD DRAW US BACK  
10:59:11 19 TO THE PATENT.

10:59:12 20 AND FIGURE 17 IN THE '193 PATENT, WHICH THE SPEC DEFINES  
10:59:16 21 AS A "DEPICTION OF A MESH NETWORK TOPOLOGY," DEPICTS WHAT I  
10:59:22 22 HAVE BEEN DISCUSSING HERE, THERE ARE REDUNDANT PATHWAYS BETWEEN  
10:59:27 23 EACH OF THE NODES.

10:59:28 24 NOW ONE IMPORTANT NOTE HERE IS THIS IS WHAT'S CALLED A  
10:59:31 25 FULL MESH NETWORK. SO THIS IS GETTING TO THE POINT I WAS

1 MAKING EARLIER THAT IN SOME VERSION OF A MESH NETWORK, EVERY  
2 NODE CAN SPEAK TO EVERY OTHER NODE. AND THAT'S WHAT YOU SEE  
3 HERE.

4 THAT'S NOT NECESSARILY REQUIRED, THAT LEVEL OF REDUNDANCY,  
5 BUT THIS IS CERTAINLY, WE OBVIOUSLY WILL AGREE, IS A MESH  
6 NETWORK. AND YOU CAN SEE FROM THESE CONNECTIONS WHERE THE  
7 ADJECTIVE COMES FROM, IT LOOKS LIKE A MESH. AND RELATED TO  
8 THIS FIGURE IN THE SPECIFICATION, IS THE ONLY REAL DESCRIPTION  
9 OF WHAT A MESH NETWORK IS, AND IT USES THE WORD "ROBUSTNESS" TO  
10 CONTRAST BETWEEN OTHER TYPES OF NETWORKS.

11 AND OUR USE OF THE WORD "REDUNDANCY" WAS JUST AN ATTEMPT  
12 TO KIND OF DEFINE THAT A LITTLE MORE CLEARLY.

13 THE COURT: YEAH, I'M NOT TOO TROUBLED BY THE WORD  
14 REDUNDANT, I THINK YOU CAN READ A LOT INTO IT THAT CAN BE  
15 SCARY. AND SO MAYBE YOU HAVE ANOTHER WORD THAT YOU CAN USE IF  
16 MR. HOSIE IS CONCERNED THAT THERE'S SOMETHING ABOUT THE WORD  
17 "REDUNDANT" THAT IS OF CONCERN.

18 BUT I THINK THESE ACTUALLY ARE AT A HIGH LEVEL, THAT'S A  
19 REDUNDANCY COMMUNICATION, ALTERNATE FORMS OF PATHWAYS FOR  
20 COMMUNICATION IS REALLY WHAT YOU GOT HERE, AND THAT, TO ME, IS  
21 A REDUNDANCY.

22 MR. BRUNS: WELL, WE CERTAINLY AGREE, YOUR HONOR.

23 THE COURT: OKAY.

24 MR. BRUNS: AND THE NEXT SLIDE HERE, AND SO WHAT  
25 WE'VE DONE HERE IS JUST TAKEN THE IMAGE YOU SAW PREVIOUSLY AND

1 PUT IT ON THE LEFT-HAND SIDE OF THE SLIDE. AND WE THINK IT'S  
2 HELPFUL TO UNDERSTANDING WHAT A MESH NETWORK IS, TO CONTRAST IT  
3 TO SOMETHING THAT IS NOT A MESH NETWORK.

4 AND THAT HERE IS A UNIDIRECTIONAL RING NETWORK. AND AS  
5 THE NAME PRETTY CLEARLY SUGGESTS, DATA MOVES THROUGH A NETWORK  
6 LIKE THIS IN ONE PREDEFINED STATIC ROUTING.

7 SO FROM THE BOTTOM RIGHT, TO THE UPPER RIGHT, TO THE TOP,  
8 ET CETERA. AND, YOU KNOW, HERE, THE BALLOONS ARE PRETTY EVENLY  
9 SPACED AND THIS SEEMS LOGICAL ENOUGH, BUT THIS ROUTING WOULD BE  
10 MAINTAINED EVEN IF THE BALLOONS MOVED SUCH THAT IT WAS NOT  
11 QUITE AS LOGICAL AND NEAT AS IT IS HERE, IT'S A STATIC ROUTE.

12 SO BY ANY DEFINITION THAT WIKIPEDIA OR MANY OTHER  
13 REPUTABLE SOURCES, THIS IS NOT A MESH NETWORK.

14 HOWEVER, IF WE GO TO THE NEXT SLIDE, YOU CAN COMPARE AGAIN  
15 BACK TO SPACE DATA'S CONSTRUCTION. THEY SIMPLY REQUIRE THAT  
16 EACH BALLOON IS CAPABLE OF COMMUNICATING WITH ONE OR MORE OTHER  
17 BALLOONS. AND I THINK PRETTY CLEARLY, A UNIDIRECTIONAL RING  
18 NETWORK FITS THAT DEFINITION.

19 NOW LET'S LOOK AT THESE IN PRACTICE ON THE NEXT SLIDE. SO  
20 THIS, AGAIN, IS THE UNIDIRECTIONAL RING NETWORK. AND WE'VE  
21 LABELED THE BALLOONS A TO E, JUST TO MAKE THE CONVERSATION A  
22 LITTLE BIT EASIER.

23 AND SO THE ONLY WAY THE DATA CAN MOVE THROUGH THIS NETWORK  
24 IS TO TAKE THE DATA FROM BALLOON A TO BALLOON B, C, AND THEN D.  
25 WE HAVE A LITTLE ANIMATION HERE THAT DEPICTS THAT. I THINK

11:02:30 1 IT'S EASY ENOUGH TO FOLLOW.

11:02:32 2 I BELIEVE YOU ASKED EARLIER, YOUR HONOR, WHAT HAPPENS IN A  
11:02:36 3 NETWORK WHEN A BALLOON IS NO LONGER OPERATIONAL. IN A NETWORK  
11:02:42 4 SUCH AS THIS, IF BALLOON C WERE TO DROP OFF, SO IF IT DRIFTS  
11:02:47 5 AWAY OR BURSTS FOR SOME OTHER REASON IT'S NO LONGER  
11:02:52 6 COMMUNICABLE. IN A NETWORK LIKE THIS, THE DATA CANNOT TRAVEL  
11:02:56 7 FROM A TO D IN ANY OTHER ROUTE, IT'S NOT CAPABLE OF DYNAMISM OR  
11:03:01 8 REROUTING BECAUSE THERE'S NO REDUNDANCY.

11:03:06 9 SO QUITE SIMPLY, THE SYSTEM WOULD FAIL. IT WOULDN'T BE A  
11:03:09 10 NETWORK, YOU COULD SAY, BUT MORE IMPORTANTLY, THE DATA COULD  
11:03:13 11 NOT GET FROM POINT A TO POINT D.

11:03:16 12 THE COURT: RIGHT.

11:03:16 13 MR. BRUNS: SO ON THE NEXT SLIDE WE WILL QUICKLY SHOW  
11:03:19 14 YOU, IT'S SIMILAR TO WHAT COUNSEL SHOWED YOU EARLIER, BUT I  
11:03:22 15 THINK ILLUSTRATES THE DISTINCTION BETWEEN REDUNDANCY AND  
11:03:27 16 PERMANENCE A LITTLE MORE CLEARLY.

11:03:28 17 SO THE SAME CONFIGURATION OF BALLOONS, BUT HERE WE HAVE A  
11:03:32 18 MESH DEPICTED WITH THE DOTTED LINES. AND BECAUSE THE MESH IS  
11:03:35 19 DYNAMIC AND CAN EFFICIENTLY ROUTE DATA DEPENDING ON CONDITIONS,  
11:03:39 20 HERE WE CAN GET DATA FROM BALLOON A TO BALLOON D, IF BALLOON D  
11:03:44 21 WERE TO MOVE, AND THE MOST EFFICIENT ROUTE WAS NO LONGER  
11:03:48 22 SENDING DATA DIRECTLY BETWEEN THOSE BALLOONS, IT COULD BE  
11:03:51 23 ROUTED VIA BALLOON E.

11:04:00 24 AND AGAIN, SPEAKING TO YOUR HONOR'S QUESTIONS EARLIER, IF  
11:04:03 25 BALLOON E WERE TO DISAPPEAR, THIS SYSTEM IS CAPABLE BECAUSE OF



1 THE REDUNDANT PATHWAYS AND IT'S DYNAMIC CAPABILITY OF SENDING  
2 THE DATA TO BALLOON D, FROM BALLOON A, THROUGH BALLOON C.

3 SO I THINK THAT'S ALL PRETTY CLEAR. AND AS I MENTIONED,  
4 WE HAVE ATTEMPTED TO ENCOMPASS WHAT I THINK OUR COMMON GROUNDS  
5 HERE WITH SPACE DATA ON THE NEXT SLIDE.

6 AND YOU CAN GO AHEAD AND BRING UP THE NEXT THING AS WELL.

7 SO BASED ALMOST VERBATIM ON SPACE DATA'S REPLY BRIEF IN  
8 WHICH THEY SAY THAT THE HALLMARK OF A MESH NETWORK IS THE  
9 ABILITY OF THE NODES WITHIN IT TO CONNECT DIRECTLY, DYNAMICALLY  
10 AND NON-HIERARCHICALLY TO AS MANY OTHER NODES AS POSSIBLE AND  
11 TO COOPERATE WITH ONE ANOTHER TO EFFICIENTLY ROUTE DATA.

12 WE BASICALLY PUT THAT EXACT VERBIAGE IN OUR PROPOSAL TO  
13 THEM. AND THEIR RESPONSE WAS THAT THAT WAS TOO CONFUSING FOR A  
14 JURY, PARTICULARLY NODES AND WITH HIERARCHICALLY. AND WE ARE  
15 UNDERSTANDING OF THAT. THAT'S FAIR.

16 AND SO WE TRIED AGAIN, THIS TIME COMBINING, I BELIEVE THIS  
17 PORTION OF THE REPLY BRIEF WITH SOME OF DR. PULLEN'S TESTIMONY.  
18 AND SAID A DECENTRALIZED NETWORK OF BALLOONS, WHERE EACH  
19 BALLOON CONNECTS TO AS MANY OTHER BALLOONS AS POSSIBLE AND CAN  
20 CONNECT DYNAMICALLY -- PARDON ME -- CAN DYNAMICALLY REROUTE  
21 DATA FOR EFFICIENCY, OR IN THE EVENT OF A BALLOON FAILURE.

22 THE COURT: SO WHAT IS DECENTRALIZED NETWORK?

23 MR. BRUNS: WELL, THAT'S A GOOD QUESTION, YOUR HONOR.  
24 AND THAT WAS SPACE DATA'S ISSUE.

25 I THINK THAT WAS OUR EFFORT TO REIGN IN NON-HIERARCHICALLY

11:05:47 1 AS A SLIGHTLY LESS --

11:05:49 2 THE COURT: I JUST DON'T -- I MEAN, I DON'T EVEN KNOW  
11:05:51 3 WHAT THAT MEAN MEANS. I MEAN, I'M JUST A LAYPERSON LIKE THE  
11:05:55 4 JURY.

11:05:55 5 MR. BRUNS: WELL, I DON'T THINK WE ARE WEDDED TO THAT  
11:05:58 6 WORD IN PARTICULAR. I THINK THE KEY HERE --

11:05:59 7 THE COURT: BECAUSE I UNDERSTAND WHAT  
11:06:01 8 NON-HIERARCHICAL MEANS, I DON'T UNDERSTAND WHAT DECENTRALIZED  
11:06:05 9 IS.

11:06:05 10 MR. BRUNS: FAIR ENOUGH. WE WOULD BE HAPPY TO RETURN  
11:06:07 11 TO NON-HIERARCHICAL.

11:06:08 12 I THINK OUR EFFORTS HERE WERE TO TRY TO FIND BOTH TERMS  
11:06:12 13 THAT WERE SIMILAR TO WHAT BOTH PARTIES AGREE AND WHAT  
11:06:17 14 EVERYBODY, AND WIKIPEDIA AGREES IS A MESH NETWORK.

11:06:21 15 WE ASKED SPACE DATA FOR --

11:06:23 16 THE COURT: SO "AS MANY AS POSSIBLE," COULD BE ZERO.  
11:06:26 17 YOU NEED TO FIX THIS.

11:06:29 18 MR. BRUNS: FAIR ENOUGH. THAT'S A GOOD POINT,  
11:06:32 19 YOUR HONOR.

11:06:33 20 AND WE ARE HAPPY TO GO BACK TO THE DRAWING BOARD. BUT I  
11:06:38 21 THINK MAYBE THE GUIDANCE THAT WOULD BE HELPFUL IS JUST, WHICH I  
11:06:42 22 THINK YOU'VE KIND OF OFFERED HERE, IS THAT REDUNDANCY IS A PART  
11:06:45 23 OF THIS. AND IT'S NOT JUST ABOUT THE DYNAMISM ALONE, IT'S  
11:06:49 24 INHERENT IN DYNAMISM THAT THERE ARE REDUNDANT PATHS.

11:06:53 25 THE COURT: WELL, THERE ARE MULTIPLE PATHS.

11:06:57 1 MR. BRUNS: CORRECT.

11:06:58 2 THE COURT: THAT CAN DYNAMICALLY REROUTE DATA.

11:07:01 3 AND SO, YOU KNOW, SOMETIMES AS YOU TRY TO SIMPLIFY, WE  
11:07:07 4 HAVE TO JUST KEEP ALL THE CONCEPTS.

11:07:09 5 MR. BRUNS: YEAH.

11:07:10 6 THE COURT: SO SPACE DATA'S SUGGESTION WAS BALLOONS  
11:07:12 7 IN WHICH EACH BALLOON IN THE NETWORK IS CAPABLE OF  
11:07:16 8 COMMUNICATING WITH ONE OR MORE.

11:07:18 9 SO I THINK THAT'S RIGHT. I DON'T THINK ANYONE DISAGREES.  
11:07:25 10 IT PROBABLY HAS TO BE MORE -- I'M NOT SURE ONE EVEN WORKS,  
11:07:28 11 BECAUSE ONE COULD BE THE RING, THAT'S WHAT YOU ARE SAYING.

11:07:34 12 SO IT NEEDS TO BE WITH, THE PATENTS WOULD SAY A PLURALITY,  
11:07:37 13 BUT THE JURY DOESN'T KNOW WHAT THAT MEANS. WITH MORE THAN ONE.  
11:07:43 14 AND WITH AT LEAST MORE THAN ONE.

11:07:46 15 I MEAN, THAT'S REALLY -- I THINK I UNDERSTAND, THAT'S WHY  
11:07:50 16 I DON'T HAVE TO WRITE THIS STUFF VERY OFTEN. BUT AGAIN, IT HAS  
11:07:53 17 TO BE -- THIS COULD BE ZERO, I DON'T THINK -- AND SPACE DATA'S  
11:07:58 18 COULD BE ONE.

11:07:59 19 MR. BRUNS: RIGHT.

11:07:59 20 THE COURT: BOTH ARE INCORRECT.

11:08:01 21 MR. BRUNS: WE ARE JUST ONE AWAY.

11:08:02 22 THE COURT: SO WE ARE JUST ONE AWAY, AND I KNOW YOU  
11:08:04 23 CAN GET THERE.

11:08:05 24 MR. BRUNS: THANK YOU, YOUR HONOR.

11:08:05 25 THE COURT: OKAY. ALL RIGHT. SO I'M GOING TO PUT

11:08:08 1 THAT BACK ON YOUR DRAWING BOARD THEN, NOT MINE.

11:08:10 2 MR. BRUNS: ALL RIGHT. THANK YOU, YOUR HONOR.

11:08:26 3 THE COURT: OKAY. WE WILL MOVE TO THE NEXT TERM,  
11:08:31 4 "WHEREIN AT LEAST ONE OF THE GEOGRAPHICAL COORDINATE TRACKING  
11:08:35 5 SYSTEM COMPRISES GPS." SO THIS IS THE POTENTIAL ERROR,  
11:08:40 6 DRAFTING ERROR. ALWAYS A DILEMMA FOR A COURT AS TO HOW FAR TO  
11:08:47 7 GO AND WHETHER IT'S TOO MUCH.

11:08:52 8 MR. MARTIN: YOUR HONOR, THAT'S CORRECT.

11:08:56 9 "WHEREIN AT LEAST ONE OF THE GEOGRAPHICAL COORDINATES  
11:08:59 10 TRACKING SYSTEM COMPRISES A GPS."

11:09:08 11 YOUR HONOR, WE THINK THAT THE CLAIM LANGUAGE IS CLEAR TO  
11:09:13 12 ONE OF ORDINARY SKILL IN THE ART. DR. HANSMAN TESTIFIED AND  
11:09:20 13 UNDERSTOOD WHAT GEOGRAPHICAL COORDINATES TRACKING SYSTEM WAS.  
11:09:24 14 DR. HANSMAN TESTIFIED AT HIS DEPOSITION THAT HE KNEW WHAT A GPS  
11:09:27 15 RECEIVER WAS. HE TESTIFIED THAT A GPS RECEIVER IS A  
11:09:31 16 GEOGRAPHICAL COORDINATES TRACKING SYSTEM.

11:09:35 17 DR. HANSMAN'S ONLY PROBLEM WITH THE CLAIM IS THAT HE  
11:09:41 18 DIDN'T SEEM TO KNOW WHERE TO PUT THE GEOGRAPHICAL COORDINATES  
11:09:49 19 TRACKING SYSTEM. YOUR HONOR, WHERE BALLOONS ARE, WHERE  
11:09:54 20 PLATFORMS ARE, ARE AT THE HEART OF BOTH THE '503 AND '706  
11:09:59 21 PATENTS. EVERY -- THE FIRST 1, 2, 3, 4, 5, 6, 7 QUESTIONS THAT  
11:10:11 22 THE ALGORITHM THAT'S BUILT INTO PART OF THE PATENTS ASKS, IS  
11:10:15 23 BASED ON WHERE IS THE BALLOON AND HOW FAST IS IT GOING. THAT'S  
11:10:19 24 WHAT THESE PATENTS ARE ABOUT.

11:10:23 25 THE SPECIFICATION IS CLEAR THAT THE PRESENT INVENTION

UTILIZES A GPS UNIT AND PROCESSOR TO DETERMINE THE CURRENT  
PLATFORM'S GEOGRAPHIC COORDINATES AND VELOCITIES.

NOW "PLATFORM" HERE IS IMPORTANT. THE INVENTION UTILIZES  
A GPS UNIT TO DETERMINE THE CURRENT PLATFORM'S GEOGRAPHIC  
COORDINATES AND VELOCITIES. IF WE TURN TO THE CLAIM LANGUAGE,  
FOR INSTANCE, CLAIM ONE OF THE '503 PATENT, EACH ONE OF THESE,  
EXCEPT I BELIEVE '706, CLAIM 29, WHICH IS SLIGHTLY DIFFERENT,  
BUT EACH ONE OF THESE CLAIMS IN THE '503 PATENT COMPRISES.

EACH ONE OF THESE CLAIMS DESCRIBES A SYSTEM COMPRISING A  
PLURALITY OF AIRBORNE PLATFORMS, EACH AIRBORNE PLATFORM  
COMPRISING AN UNMANNED BALLOON, A PAY LOAD, ET CETERA,  
ET CETERA.

NOW, TO TRACK THE LOCATION OF A SPECIFIC AIRBORNE  
PLATFORM, WHICH IS A BALLOON CONNECTED TO A BUNCH OF OTHER  
THINGS, ONE HAS TO HAVE THE GPS RECEIVER WITH THE PLATFORM,  
RIGHT.

YOU CAN'T TRACK -- IF YOU ARE ON A HIKE WITH A GPS  
RECEIVER, IT KNOWS WHERE YOU ARE BECAUSE YOU ARE WITH IT. IF  
YOU LEAVE YOUR GPS RECEIVER AT HOME, THE GPS RECEIVER DOESN'T  
KNOW WHERE YOU ARE.

SO EACH PLATFORM NEEDS ONE. IT NEEDS TO BE INCLUDED IN  
THE LIST OF THINGS THAT THE PLATFORM COMPRISES. SO THAT'S  
DR. HANSMAN'S ONLY PROBLEM WITH THE CLAIM, OR WITH THE TERM.

AND YOUR HONOR, HONESTLY, WE THINK READING THE  
SPECIFICATION, A PERSON OF ORDINARY SKILL IN THE ART KNOWS

11:12:07 1 EXACTLY WHAT THIS MEANS.

11:12:09 2 THE COURT: SO I GUESS I WAS A LITTLE UNCLEAR FROM  
11:12:11 3 YOUR BRIEFING WHETHER YOU WERE ACTUALLY CONCEDED A DRAFTING  
11:12:13 4 ERROR OR YOU ARE SAYING IT COULD BE CONSIDERED A DRAFTING  
11:12:16 5 ERROR, BUT DOESN'T HAVE TO BE.

11:12:17 6 MR. MARTIN: THE WAY I WILL PUT IT, YOUR HONOR, IS  
11:12:23 7 THAT WE THINK THE MEANING IS CLEAR TO A PERSON OF ORDINARY  
11:12:27 8 SKILL IN THE ART.

11:12:29 9 IF THE COURT DISAGREES, THE FIX HERE IS REASONABLE, AND  
11:12:32 10 IT'S NONCONTROVERSIAL.

11:12:33 11 AND GOOGLE RAISES THREE ARGUMENTS TO SAY IT IS. THE FIRST  
11:12:37 12 ARGUMENT, I THINK IS, WELL, SPACE DATA HAS OTHER CLAIMS THAT  
11:12:41 13 ARE SIMILAR THAT DON'T HAVE THIS PROBLEM, WHICH THERE'S NO  
11:12:45 14 BASIS IN LAW, AND GOOGLE DOESN'T CITE ANY.

11:12:50 15 THE OTHER ARGUMENT GOOGLE RAISES IN ITS BRIEFING, I  
11:12:56 16 BELIEVE, IS THAT THERE'S NOTHING -- THAT'S INCORRECT, PARDON  
11:13:02 17 ME, YOUR HONOR. I LOST MY PLACE IN MY BINDER.

11:13:18 18 ONE OF THE OTHER ARGUMENTS THAT GOOGLE MAKES IS THAT THE  
11:13:22 19 CORRECTION IS SUBJECT TO REASONABLE DEBATE BECAUSE THE  
11:13:25 20 SPECIFICATION MENTIONS A TRACKING SYSTEM AND A GEOGRAPHIC  
11:13:31 21 LOCATOR.

11:13:34 22 WELL, YOUR HONOR, THE CLAIM ONLY MENTIONS GEOGRAPHICAL  
11:13:38 23 COORDINATES TRACKING SYSTEM. THERE'S NO REASON TO IMPORT A  
11:13:41 24 LOCATOR INTO THE CLAIM, AND THAT'S THE FALSE DICHOTOMY GOOGLE  
11:13:44 25 IS DRAWING THERE.

11:13:47 1 THE FINAL ARGUMENT THAT GOOGLE MAKES IS THAT THE GPS --  
11:13:59 2 EXCUSE ME -- THE GEOGRAPHIC COORDINATES TRACKING SYSTEM COULD  
11:14:01 3 SOMEHOW OPERATE OFF BALLOON.

11:14:03 4 WELL, YOUR HONOR, IF IT'S GOING TO COMPRISE A GPS, THEN IT  
11:14:06 5 COULD NOT.

11:14:08 6 AND THAT'S MY ARGUMENT ON THAT POINT. DO YOU HAVE ANY  
11:14:10 7 QUESTIONS?

11:14:11 8 THE COURT: ALL RIGHT.

11:14:12 9 SO JUST SO THAT I CAN BE SURE ON THIS, YOU ARE NOT  
11:14:15 10 CONCEDING A DRAFTING ERROR, BUT IF I DETERMINE THAT IT'S  
11:14:18 11 UNCLEAR, THEN YOU WOULD LIKE ME TO TREAT IT AS A DRAFTING ERROR  
11:14:23 12 AND CORRECT THE PATENT.

11:14:26 13 MR. MARTIN: YOUR HONOR, SO THAT'S CORRECT, AND I'LL  
11:14:30 14 PHRASE MY ANSWER IN TERMS OF THE MPEP SECTION THAT'S ON POINT.  
11:14:35 15 AND THE MPEP SAYS -- WELL, THE QUESTION TO ASK IS JUST THE SAME  
11:14:39 16 OLD NORMAL QUESTION YOU ASK IN INDEFINITENESS, CAN ONE OF  
11:14:45 17 ORDINARY SKILL IN THE ORDER UNDERSTAND WHAT THIS MEANS?

11:14:47 18 AND THAT IS WITH THE KNOWLEDGE THAT THERE'S A LACK OF  
11:14:52 19 ANTECEDENT BASIS, RIGHT, YOUR HONOR. THE MPEP SECTION THAT  
11:14:59 20 APPLIES HERE SAYS IF THERE'S A LACK OF ANTECEDENT BASIS, THAT  
11:15:02 21 DOESN'T MEAN THAT IT'S NECESSARILY INDEFINITE. THE QUESTION TO  
11:15:05 22 ASK IS CAN ONE OF ORDINARY SKILL IN THE ART UNDERSTAND WHAT IT  
11:15:08 23 MEANS.

11:15:10 24 THE COURT: OKAY. THAT'S HELPFUL.

11:15:30 25 MR. HENRY: YOUR HONOR, SHAYNE HENRY ON BEHALF OF THE

11:15:33 1 DEFENDANTS.

11:15:35 2 IT'S REALLY INDISPUTABLE THAT THERE'S A LACK OF AN  
11:15:37 3 ANTECEDENT BASIS FOR THIS CLAIM TERM. WHEN WE LOOK AT THE  
11:15:40 4 CLAIM TERM -- IF YOU WILL GO BACK ONE SLIDE. NO, TO THE END.  
11:16:18 5 THE NEXT ONE.

11:16:18 6 MR. VAN NEST: IT'S HARD TO GET A GOOD TECH THESE  
11:16:21 7 DAYS.

11:16:21 8 MR. HOSIE: ESPECIALLY AT GOOGLE.

11:16:22 9 MR. HENRY: SO CLAIM ONE OF THE '503 PATENT DISPLAYS  
11:16:26 10 THE SAME PROBLEM THAT EXISTS FOR ALL OF THE CLAIMS AT ISSUE  
11:16:28 11 WITH THIS CLAIM TERM. AND THAT IS WE HAVE THIS LANGUAGE AS A  
11:16:31 12 RECITED ELEMENT OF THE CLAIM, WHEREIN AT LEAST ONE OF THE  
11:16:34 13 GEOGRAPHICAL COORDINATES TRACKING SYSTEM COMPRISES A GPS.

11:16:37 14 THAT LANGUAGE DOESN'T APPEAR IN THE PREAMBLE, THAT  
11:16:40 15 SPECIFIC LANGUAGE DOES NOT APPEAR IN THE SPECIFICATION.

11:16:41 16 SO THERE REALLY IS A LACK OF AN ANTECEDENT BASIS. AND  
11:16:45 17 WHAT SPACE DATA IS REALLY ASKING YOUR HONOR TO DO IS TO WRITE  
11:16:47 18 IN THAT LANGUAGE INTO THE PREAMBLE OF THESE CLAIMS. AND IT'S  
11:16:53 19 GOOGLE'S POSITION THAT WHILE COURTS ARE PERMITTED TO CONSTRUE  
11:16:56 20 TERMS TO CORRECT MINOR TYPOGRAPHICAL ERRORS, THIS IS WELL  
11:17:01 21 OUTSIDE OF WHAT'S CONTEMPLATED BY THAT AUTHORITY.

11:17:03 22 THIS ISN'T THE CASE WHERE A SINGLE WORD NEEDS TO BE  
11:17:06 23 ALTERED OR OMITTED TO RESOLVE SOME INADVERTENT AMBIGUITY.  
11:17:09 24 INSTEAD, SPACE DATA ASKS YOUR HONOR TO CURE AN UNDISPUTED LACK  
11:17:13 25 OF ANTECEDENT BASIS BY READING A 13-WORD CLAUSE INTO THE



11:17:18 1 PREAMBLE OF FIVE DIFFERENT CLAIMS ACROSS TWO DIFFERENT PATENTS.

11:17:22 2 MOREOVER, WE'VE EXPLAINED IN OUR BRIEFING WHY WE BELIEVE A  
11:17:25 3 CORRECTION OF THIS NATURE WOULD BE UNWARRANTED IN LIGHT OF THE  
11:17:27 4 SPECIFICATION.

11:17:28 5 AND SO AS NOT TO BELABOR THE POINT, YOUR HONOR, WE WILL  
11:17:30 6 REST ON OUR BRIEFING.

11:17:31 7 THE COURT: OKAY. THANK YOU.

11:17:32 8 WELL, THE BRIEFING IS CLEAR ON THIS POINT, I JUST HAVE TO  
11:17:35 9 DECIDE HOW BIG A DEAL THIS IS.

11:17:38 10 MR. MARTIN: YOUR HONOR, MAY I HAVE BRIEF FOLLOWUP?

11:17:42 11 THE COURT: SURE, OF COURSE.

11:17:46 12 MR. MARTIN: FIRST, YOUR HONOR, THE FACT THAT THIS  
11:17:50 13 ISSUE OCCURS ACROSS FIVE CLAIMS AND TWO PATENTS MAKES IT MORE,  
11:17:56 14 NOT LESS LIKELY THAT IT IS A DRAFT, MINOR DRAFTING ERROR THAT  
11:18:02 15 CAN BE CORRECTED.

11:18:02 16 SECOND, YOUR HONOR, CORRECTING A LACK OF ANTECEDENT BASIS  
11:18:10 17 IS SOMETHING THAT GOOGLE HAS TOLD THIS COURT BEFORE IT  
11:18:14 18 SHOULDN'T DO, AND THIS COURT HAS DONE IT IN  
11:18:21 19 WILLIAMSON V. GOOGLE.

11:18:21 20 THE COURT: WAS I AFFIRMED?

11:18:24 21 MR. VAN NEST: THAT REMAINS TO BE SEEN, YOUR HONOR.

11:18:26 22 THE COURT: OKAY. THERE YOU HAVE IT. YOU SEE.

11:18:30 23 MR. MARTIN: THANK YOU, YOUR HONOR.

11:18:31 24 THE COURT: THANK YOU.

11:18:34 25 I CAN'T PUT TOO MUCH STOCK IN WHAT I'VE DONE BEFORE, UNTIL

11:18:40 1 I'M TOLD I DID IT RIGHT.

11:18:41 2 ALL RIGHT. ARE WE READY TO MOVE TO OUR LAST TERM?

11:18:46 3 MR. MARTIN: I'M BACK UP.

11:18:54 4 THE COURT: AND THIS IS "SUBSTANTIALLY DRIFTS ALONG."

11:18:59 5 MR. MARTIN: "WITH THE WINDS, TAKING INTO ACCOUNT THE  
11:19:01 6 WINDS, TO PREVENT THE AIRBORNE PLATFORM FROM BECOMING AN  
11:19:09 7 UNCONTROLLED LIGHTER THAN AIR PLATFORM."

11:19:13 8 YOUR HONOR, AS ORIGINALLY BRIEFED IN SPACE DATA'S OPENING  
11:19:17 9 BRIEF, THIS TERM OR A VARIANT OF IT, APPEARED IN ASSERTED  
11:19:24 10 CLAIMS 4 AND 28 OF THE '503 PATENT.

11:19:31 11 AFTER RECEIVING GOOGLE'S OPPOSITION, WHICH RELATES ONLY, I  
11:19:37 12 THINK TO CLAIMS FOUR AND FIVE OF THE '503 PATENTS, SPACE DATA  
11:19:43 13 ELECTED TO NO LONGER ASSERT CLAIM FOUR. SPACE DATA, IN ITS  
11:19:47 14 INITIAL ELECTION OF ASSERTED CLAIMS, DID NOT ASSERT CLAIM FIVE.

11:19:51 15 THE COURT: SO I AGREE WITH YOU THAT THERE'S NO  
11:19:53 16 BRIEFING ABOUT CLAIM 28, I KIND OF LOOKED AT THAT AS WELL, I  
11:19:58 17 CERTAINLY WANT TO HEAR ABOUT THAT. YOU ARE ACTUALLY SUGGESTING  
11:20:01 18 THAT THERE'S NO DISPUTE HERE.

11:20:03 19 MR. MARTIN: I WOULDN'T GO THAT FAR, YOUR HONOR.

11:20:05 20 THE COURT: OKAY. THAT'S GOOD.

11:20:07 21 MR. MARTIN: I THINK THERE'S SOME DISPUTE, BUT I  
11:20:10 22 THINK THE DISPUTE MAY BE RELATIVELY NARROW.

11:20:13 23 THE COURT: OKAY.

11:20:14 24 MR. MARTIN: THE PARTIES, I THINK, AGREE THAT CLAIM  
11:20:18 25 28 DEPENDS FROM CLAIM 20 OF THE '503 PATENT. I THINK THE

1 PARTIES AGREE THAT "SUBSTANTIALLY DRIFTS ALONG WITH THE WIND  
2 CURRENTS," SIMPLY ACCOUNTS FOR THE FACT THAT BALLOONS HAVE MASS  
3 AND VOLUME.

4 SO AS A BALLOON IS BEING BLOWN ALONG BY A WIND CURRENT, IT  
5 EXPERIENCES SOME DRAG. IF THE WIND ACCELERATES TO A NEW SPEED,  
6 IT TAKES TIME TO ACCELERATE THE BALLOON ATTACHED TO THE  
7 COMPONENTS THAT ALL TOGETHER MAKE THE PLATFORM.

8 IT TAKES TIME FOR THAT TO COME UP TO THE SPEED OF THE  
9 WIND, YOUR HONOR. SO IT SIMPLY ACCOUNTS FOR NATURAL FORCES.

10 AND AT LEAST DR. HANSMAN HAS TESTIFIED HE UNDERSTANDS WHAT  
11 THE LAST BIT OF THIS MEANS, AN UNCONTROLLABLE LIGHT OF AIRBORNE  
12 PLATFORM DR. HANSMAN TESTIFIES THAT IT'S NOT CONTROLLED. THE  
13 PLATFORM IS "NOT CONTROLLED."

14 THE COURT: THE BIRTHDAY BALLOON EXAMPLE.

15 MR. MARTIN: AND YOUR HONOR, IT'S IMPORTANT TO LOOK  
16 AT THE CLAIM THAT CLAIM 28 DEPENDS FROM.

17 SO CLAIM 20 IS AN INDEPENDENT CLAIM HERE. AND IT  
18 COMPRISES, AGAIN, A PLURALITY AIRBORNE PLATFORMS, AND EACH  
19 AIRBORNE PLATFORM HAS A NUMBER OF ELEMENTS.

20 THERE IS AN UNMANNED BALLOON. THERE IS, AMONG THE OTHER  
21 ELEMENTS, A SENSOR, AND A PROCESSOR. AND YOUR HONOR, THERE'S  
22 ONE OTHER ELEMENT IN THIS CLAIM THAT'S IMPORTANT TO CLAIM 28,  
23 THE GEOGRAPHIC COORDINATES TRACKING SYSTEM.

24 SO THE AIRBORNE PLATFORM IS ALL OF THOSE THINGS, RIGHT,  
25 AND SOME OTHER THINGS AS WELL. BUT FOR THE PURPOSES OF

11:22:18 1 EVALUATING CLAIM 28 AND UNDERSTANDING IT, THOSE ARE THE  
11:22:21 2 IMPORTANT PARTS.

11:22:27 3 YOUR HONOR, HERE WE HAVE A POINT SOMEWHERE IN SOUTHERN  
11:22:32 4 ARIZONA, WITH THE PROVERBIAL LINE IN THE SAND BETWEEN THE  
11:22:36 5 UNITED STATES AND MEXICO.

11:22:39 6 AND WE ARE GOING TO PUT UP A PLATFORM, RIGHT. AND THE  
11:22:44 7 PLATFORM HAS A NUMBER OF ELEMENTS, INCLUDING AN UNMANNED  
11:22:47 8 BALLOON, A SENSOR, GPS AND A PROCESSOR.

11:22:51 9 NOW, THE BALLOON CAN DRIFT ALONG WITH THE WIND, AND IT  
11:22:55 10 COULD BE THAT THE WIND IS BLOWING IT OFF TO MEXICO. AND IT  
11:23:01 11 COULD BE THAT YOU DON'T WANT THE BALLOON -- THE SYSTEM DOESN'T  
11:23:06 12 WANT THE BALLOON TO BE IN MEXICO BECAUSE IT'S ILLEGAL TO BE IN  
11:23:09 13 MEXICO, BECAUSE MAYBE IT'S ILLEGAL TO TRANSMIT IN MEXICO,  
11:23:12 14 RIGHT, SO TRANSMITTERS AS WELL.

11:23:14 15 BUT THERE COULD BE A LOT OF REASONS TO AVOID CROSSING THE  
11:23:18 16 BORDER HERE. AND SO THE BALLOON -- WE SAW THE BALLOON  
11:23:22 17 SUBSTANTIALLY DRIFT, RIGHT, IT SUBSTANTIALLY DRIFTED WITH THE  
11:23:25 18 WIND CURRENT OVER THE BORDER.

11:23:26 19 SO WHAT DOES "TAKING INTO ACCOUNT" MEAN? TAKING INTO  
11:23:29 20 ACCOUNT MEANS THE WIND -- THE BALLOON KNOWS WHERE IT'S GOING,  
11:23:33 21 AND IT KNOWS WHERE IT'S GOING BECAUSE THE PLATFORM, WHICH IT IS  
11:23:40 22 A PART OF, HAS COMPONENTS LIKE A GPS DEVICE, AND A SENSOR. AND  
11:23:45 23 THAT COULD BE A WIND SENSOR, YOUR HONOR.

11:23:49 24 SO THE BALLOON KNOWS WHERE IT'S GOING, IT'S DRIFTING BUT  
11:23:51 25 IT'S NOT AIMLESS. AND HERE, IT KNOWS IT'S GONE OVER THE

1 MEXICAN BORDER. SO IT COULD TAKE A NUMBER OF ACTIONS. IT  
2 COULD CHANGE ALTITUDE SO THAT IT IS BLOWN BACK BY A DIFFERENT  
3 WIND CURRENT, BLOWN BACK OVER THE BORDER.

4 SO THAT'S ONE WAY TO TAKE INTO ACCOUNT THE WIND CURRENT,  
5 YOUR HONOR, IS TO STEER THE BALLOON.

6 ANOTHER WAY THAT THE '503 ASKS ABOUT, PARTICULARLY, IS  
7 WHAT HAPPENS IF THE PLATFORM VELOCITY GETS TOO HIGH? THESE  
8 BALLOONS RECEIVE COMMAND SIGNALS FROM THE GROUND. NOT ALL THE  
9 TIME, A LOT OF IT IS PREPROGRAMMED INTO THE PROCESSOR, BUT  
10 THESE BALLOONS CAN RECEIVE COMMAND CONTROL SIGNALS FROM THE  
11 GROUND. AND THAT'S MADE CLEAR, YOUR HONOR, IN COLUMN -- MY  
12 APOLOGIES, YOUR HONOR. IT'S MADE CLEAR IN COLUMN 6, LINES 10  
13 THROUGH 15 OF THE '503 PATENT.

14 SO THESE BALLOONS RECEIVE COMMAND AND CONTROL SIGNALS.  
15 AND IF THE PLATFORM IS MOVING TOO FAST, THERE CAN BE A DOPPLER  
16 SHIFT IN THE CONTROL SIGNAL ITSELF. THESE CONTROL SIGNALS ARE  
17 ELECTROMAGNETIC FREQUENCY SIGNALS. IF SOMETHING IS MOVING TOO  
18 FAST, THERE COULD BE A DOPPLER SHIFT AND THE BALLOON MIGHT NOT  
19 GET THE MESSAGE.

20 AND DR. HANSMAN AGREES WITH THAT. HE SAYS YOU MAY BE  
21 AFFECTING IT FASTER THAN THE DOPPLER SHIFT, AND THAT WOULD  
22 CREATE PROBLEMS WITH YOUR RECEIVERS.

23 SO IF THE BALLOON IS MOVING TOO QUICKLY, ITS RECEIVER IS  
24 ONLY CONFIGURED TO PICK UP TRANSMISSIONS ON A CERTAIN  
25 FREQUENCY. AND IF IT MOVES TOO FAST, THE CONTROL SIGNAL THAT

11:26:05 1 NORMALLY WORKS JUST FINE WITH THAT ANTENNA, WILL BE SORT OF  
11:26:09 2 STRETCHED OUT BECAUSE THE BALLOON IS MOVING AWAY FROM IT AS THE  
11:26:12 3 CONTROL SIGNAL IS MOVING TOWARDS THE BALLOON. SO IT COULD BE  
11:26:16 4 UNCONTROLLED IF IT MOVES TOO FAST.

11:26:18 5 AND ONE OF THE WAYS THE BALLOON CAN TAKE INTO ACCOUNT  
11:26:22 6 MOVING TOO QUICKLY, RIGHT, IS IT CAN SAY OKAY, I'M MOVING  
11:26:27 7 FASTER THAN I SHOULD BE, I KNOW THAT AT THIS SPEED, I'M NOT  
11:26:31 8 ABLE TO RECEIVE CONTROL SIGNALS, SO I'M NOW UNCONTROLLED, AND I  
11:26:37 9 TAKE THAT INTO ACCOUNT BY TERMINATING.

11:26:42 10 THE COURT: SO TAKING INTO ACCOUNT REALLY MEANS  
11:26:45 11 SHIFTING GEARS, REPOSITIONING, ALTERING COURSE. I DON'T KNOW  
11:26:49 12 WHAT --

11:26:50 13 MR. MARTIN: TERMINATING.

11:26:50 14 THE COURT: TERMINATING, YEAH.

11:26:53 15 MR. MARTIN: DOING SOMETHING.

11:26:57 16 NOW, YOUR HONOR, ARE THERE ANY QUESTIONS?

11:27:00 17 THE COURT: IT'S A LOT TO READ INTO "TAKING INTO  
11:27:05 18 ACCOUNT," I DON'T THINK IT'S UNFAIR, BUT BECAUSE YOU GAVE ME NO  
11:27:08 19 CONSTRUCTION, AND SO YOU ARE READING A LOT OF MEANING INTO  
11:27:11 20 "TAKING INTO ACCOUNT," YOU HAVE TO EXPLAIN TO A JURY.

11:27:17 21 SO, I MEAN, BECAUSE THERE ARE LOTS OF THINGS THAT IT CAN  
11:27:20 22 DO. I MEAN, "TERMINATING" IS ENTIRELY DIFFERENT THAN USING THE  
11:27:26 23 VENTS TO SLOW IT DOWN OR TO REPOSITION IT. I THINK YOU CAN  
11:27:31 24 ACTUALLY CHANGE DIRECTION WITH THESE BALLOONS THROUGH THIS  
11:27:33 25 CIRCULAR --

11:27:34 1 MR. MARTIN: THAT'S CORRECT, YOUR HONOR.

11:27:36 2 THE COURT: BUT THAT'S WHOLLY DIFFERENT THAN  
11:27:37 3 TERMINATING.

11:27:38 4 AND SO I'M NOT SEEING HOW ALL OF THOSE THINGS ARE  
11:27:44 5 INCLUDED, BUT ALL I DO KNOW IS THAT YOU ARE NOT TELLING THE  
11:27:47 6 JURY ANYTHING BY PLAIN AND ORDINARY MEANING.

11:27:54 7 MR. MARTIN: SO AT HIS DEPOSITION, I ASKED  
11:27:58 8 DR. HANSMAN, THIS IS ON PAGE 114 OF HIS DEPOSITION TRANSCRIPT,  
11:28:05 9 WHICH WAS, I BELIEVE EXHIBIT 6 TO THE HOSIE DECLARATION IN  
11:28:09 10 SUPPORT OF PLAINTIFF'S OPENING BRIEF.

11:28:12 11 I ASKED HIM, "WAS IT YOUR TESTIMONY THAT TAKING INTO  
11:28:15 12 ACCOUNT THE WIND CURRENTS COULD MEAN CONSIDERING THE WIND  
11:28:18 13 CURRENTS?"

11:28:20 14 AND HE RESPONDED, "YES. IF YOU CONSIDER THE WIND CURRENTS  
11:28:26 15 FOR -- YEAH, YES, TAKING INTO ACCOUNT IS TAKING INTO ACCOUNT OR  
11:28:29 16 CONSIDERING THEM FOR SOME PURPOSE."

11:28:31 17 THE COURT: WELL, THAT'S -- OF COURSE THAT'S THE  
11:28:33 18 WHOLE DEBATE HERE AS TO WHETHER IT'S JUST, I NOTE THAT I'M  
11:28:37 19 ABOUT TO BECOME A FREE-FLOATING BALLOON, AND THAT'S JUST THE  
11:28:43 20 WAY IT IS, I'M AWARE OF MY SURROUNDINGS; VERSUS, I'M TAKING IT  
11:28:47 21 INTO ACCOUNT AND CHANGING COURSE.

11:28:48 22 THAT'S REALLY -- I'M VERY CONCERNED ABOUT HOW MUCH YOU  
11:28:50 23 READ INTO "TAKING INTO ACCOUNT." I MEAN, IT JUST FALLS,  
11:28:55 24 REALLY, IN THE DIRECTION OF GOOGLE'S CONCERN WITH THIS, IS THAT  
11:28:59 25 THERE ARE ACTUALLY TWO METHODS HERE, AND WE DON'T KNOW WHICH

1 ONE IT IS. WHETHER IT'S -- WHETHER IT'S JUST CONTINUING TO  
2 DRIFT ALONG, AND SAYING, AND YOU KNOW, THE GROUND CREW SAYS  
3 DISTANCE BETWEEN BALLOON, WE TOOK IT INTO ACCOUNT, WE KNOW  
4 WHAT'S HAPPENING; OR IT'S A MATTER OF THE PROCESSOR READING THE  
5 DATA, TAKING INTO ACCOUNT AND REPOSITIONING TO STAY ON COURSE.

6 I DON'T KNOW WHERE THAT IS. AND, I MEAN, I WILL HEAR MORE  
7 OF THAT WHEN I HEAR FROM GOOGLE, BUT I THINK THAT'S VALID.

8 MR. MARTIN: YOUR HONOR, I THINK SHIFTING GEARS IS  
9 THE RIGHT WAY TO THINK ABOUT IT, IT'S DOING SOMETHING.

10 THE COURT: BUT WHY DOES "TAKING INTO ACCOUNT" MEAN  
11 THAT? I MEAN, I DON'T KNOW HOW I GLEAN THAT FROM THE PATENT,  
12 BECAUSE TAKING INTO ACCOUNT COULD JUST MEAN TAKING NOTE.

13 MR. MARTIN: BUT, YOUR HONOR --

14 THE COURT: IT COULD SIMPLY BE A COMMUNICATION TO THE  
15 GROUND THAT YOU'VE LOST ANOTHER ONE.

16 MR. MARTIN: YOUR HONOR, THIS PARTICULAR CLAIM, CLAIM  
17 28, THERE ARE TWO CLAIMS UP FOR CONSTRUCTION IN WHICH SIMILAR  
18 LANGUAGE APPEARED.

19 BUT THIS PARTICULAR CLAIM, CLAIM 28 HAS A LITTLE BIT OF  
20 EXTRA LANGUAGE AT THE END. IT SAYS "TAKING INTO ACCOUNT THE  
21 WIND CURRENTS TO PREVENT THE AIRBORNE PLATFORM FROM BEING -- "

22 THE COURT: OH, TO PREVENT, OKAY. ALL RIGHT. WELL,  
23 THAT'S -- YES.

24 MR. HOSIE: IT'S THE ACTION.

25 THE COURT: TO PREVENT, YEAH. THAT -- YES, I SEE



11:30:33 1 THAT.

11:30:35 2 MR. MARTIN: YOUR HONOR, UNLESS YOU HAVE ANY OTHER  
11:30:37 3 QUESTIONS, I CAN TURN IT OVER TO OPPOSING COUNSEL.

11:30:39 4 THE COURT: NO. I GUESS THAT SHIFTS THE ARGUMENT  
11:30:42 5 THEN.

11:30:42 6 THANK YOU.

11:30:42 7 MR. MARTIN: YOU'RE WELCOME.

11:30:46 8 MR. BRUNS: HELLO AGAIN, YOUR HONOR.

11:30:57 9 ANDREW BRUNS FOR THE PLAINTIFFS ONCE AGAIN.

11:31:00 10 SO I WILL GET RIGHT TO THE POINT, I THINK YOU HIT THE NAIL  
11:31:04 11 ON THE HEAD THAT OUR CONCERN WITH THIS TERM IS FOCUSED ON  
11:31:08 12 TAKING INTO ACCOUNT THE WIND CURRENTS, AND THE FACT THAT THAT  
11:31:12 13 IS INDEFINITE. THERE IS NO DISPUTE THAT THIS IS NOT A TERM OF  
11:31:20 14 ART. IT IS NOT DEFINED IN THE PATENT. AND THE TERM, ITSELF,  
11:31:24 15 IS NOT REALLY CLEAR AS A WHOLE. IN SHORT, IT PROVIDES NO  
11:31:28 16 GUIDANCE TO A PERSON OF SKILL WHAT THE BOUNDS OF THIS PATENT  
11:31:30 17 ACTUALLY ARE. AND DESPITE ALL OF THAT, SPACE DATA'S ONLY OFFER  
11:31:35 18 IS THAT IT IS PLAIN MEANING.

11:31:36 19 IF WE GO TO THE NEXT SLIDE.

11:31:38 20 I THINK THE FACT THAT THIS IS INDEFINITE IS CLEAR FROM  
11:31:42 21 THEIR EXPERT'S DEPOSITION TESTIMONY. AND AS YOU ALLUDED TO  
11:31:47 22 EARLIER, YOUR HONOR, DR. PULLEN REFERENCED TWO DIFFERENT VERY  
11:31:51 23 DIFFERENT DEFINITIONS FOR THIS TERM.

11:31:55 24 THE FIRST WOULD DEFINE TAKING INTO ACCOUNT THE WIND  
11:31:59 25 CURRENTS. IT'S SIMPLY A REINFORCEMENT OF THE EARLIER LANGUAGE

1 OF THE CLAIM. SO ANY BALLOON THAT IS SUBSTANTIALLY DRIFTING,  
2 SUCH AS A MYLAR BIRTHDAY BALLOON, WOULD BE TAKING INTO ACCOUNT  
3 THE WIND CURRENTS.

4 UNDER THIS DEFINITION, THIS IS NOTHING FOR THE BALLOON TO  
5 DO, THERE IS NO ACTION TAKEN.

6 THE COURT: WELL, I FELL INTO THE SAME TRAP OF NOT  
7 READING THE ENTIRE CLAIM. THERE IS, YOU TAKE INTO ACCOUNT TO  
8 PREVENT THE AIRBORNE PLATFORM FROM BECOMING UNCONTROLLED.

9 SO IT IS TAKING INFORMATION IN ORDER TO DO SOMETHING, AS  
10 OPPOSED TO JUST KNOW ABOUT IT. SO I WAS MISTAKEN BY NOT  
11 READING THE WHOLE THING AND JUST GETTING STUCK IN THE PHRASE.

12 MR. BRUNS: WELL, I THINK THERE ARE A COUPLE PROBLEMS  
13 THERE. I'M NOT SURE WHAT A JURY WOULD DO -- OR, PARDON ME, I'M  
14 NOT SURE A PERSON -- WHETHER WE KNOW WHAT A PERSON OF SKILL IN  
15 THE ART WOULD DO WITH THAT EXTRA PHRASE, I'M NOT SURE EXACTLY  
16 WHAT --

17 THE COURT: WELL, TO PREVENT IT FROM BECOMING  
18 UNCONTROLLED MEANS TO MAINTAIN CONTROL.

19 MR. BRUNS: SO ONE --

20 THE COURT: THAT'S NOT HARD.

21 MR. BRUNS: ONE EXAMPLE, THOUGH, WAS TERMINATING.  
22 AND IT SEEMS DIFFICULT TO --

23 THE COURT: YEAH. THAT, I WASN'T REALLY BUYING THE  
24 "TERMINATING." I DON'T KNOW WHERE THAT COMES FROM.

25 MR. BRUNS: YEAH.

11:33:18 1 THE COURT: BUT PREVENTING -- I SUPPOSE IF YOU  
11:33:22 2 TERMINATE IT, IT'S NOT GOING TO BE UNCONTROLLED.

11:33:26 3 MR. BRUNS: WELL, IT'S ALSO NOT SUBSTANTIALLY  
11:33:29 4 DRIFTING ANYMORE. I JUST DON'T THINK THAT'S A GOOD FIT.

11:33:35 5 I THINK IF WE COULD PROBABLY SKIP AHEAD TO --

11:33:39 6 THE COURT: LET'S JUST BACK UP TO GET AN  
11:33:41 7 UNDERSTANDING.

11:33:42 8 SO "SUBSTANTIALLY DRIFTING ALONG" REALLY MEANS THAT THE  
11:33:44 9 PRIMARY SOURCE OF MOVEMENT DIRECTION IS THE NATURAL WIND.

11:33:51 10 MR. KAMBER: I BELIEVE THAT'S RIGHT, YOUR HONOR.

11:33:53 11 THE COURT: SO "SUBSTANTIALLY DRIFTING ALONG WITH THE  
11:33:55 12 WIND CURRENTS," AND AS I LEARNED LAST WEEK, THE BALLOON HAS THE  
11:34:04 13 ABILITY, THROUGH SOME OTHER MECHANICAL ASPECTS TO IT, TO  
11:34:12 14 INCREASE THE ALTITUDE, DECREASE IT, OR I GUESS THAT'S REALLY  
11:34:16 15 THE PRIMARY THING TO CONTINUE TO TAKE ADVANTAGE OF THE WIND  
11:34:18 16 CURRENTS.

11:34:22 17 AND SO IT'S ANYTHING TO SUBSTANTIALLY DRIFT ALONG WITH  
11:34:25 18 ALTERATIONS TO ITSELF, ESSENTIALLY, TO AFFECT THE WIND CURRENT.

11:34:37 19 MR. BRUNS: WELL, I THINK EVEN UNDER THIS VERSION OF  
11:34:39 20 THE DEFINITION, THERE'S AN INTERNAL INCONSISTENCY WITHIN THE  
11:34:42 21 TERM. WE HAVE A BALLOON THAT IS SUBSTANTIALLY DRIFTING, WHICH  
11:34:45 22 IS --

11:34:45 23 THE COURT: BUT THEY ALL SUBSTANTIALLY DRIFT BECAUSE  
11:34:48 24 THEY ARE NOT PROPELLED BY A POWER SOURCE. I MEAN, ISN'T THAT  
11:34:52 25 RIGHT?

11:34:53 1 MR. BRUNS: THAT'S CORRECT, YES.

11:34:54 2 THE COURT: SO THAT'S ALL THEY DO IS DRIFT WITH  
11:34:56 3 THE -- AND I THINK THAT THE VENTING AND THE -- THERE'S AN  
11:34:59 4 ABILITY TO INCREASE THE AMOUNT OF AIR AND DECREASE THE AMOUNT  
11:35:02 5 OF AIR IN THE BALLOON, IS TO AFFECT ITS ALTITUDE WHERE THE WIND  
11:35:09 6 DIRECTION AND SPEED WILL BE DIFFERENT AT DIFFERENT ALTITUDE,  
11:35:12 7 CORRECT?

11:35:14 8 MR. BRUNS: CORRECT.

11:35:15 9 THE COURT: SO THEY ARE ALSO DRIFTING, BUT THEY ARE  
11:35:17 10 DRIFTING AT DIFFERENT LEVELS. DID I UNDERSTAND THAT CORRECTLY?

11:35:20 11 MR. BRUNS: I THINK THAT'S RIGHT.

11:35:21 12 I STILL FEEL THAT THE NOTION THAT IT'S TAKING INTO  
11:35:25 13 ACCOUNT, AND UNDER THIS DEFINITION, WHILE DOING NOTHING BUT  
11:35:28 14 DRIFTING, SEEMS INCONSISTENT TO ME.

11:35:31 15 AND I'M ALSO TROUBLED BY HOW AN UNMANNED BALLOON IS TAKING  
11:35:36 16 INTO ACCOUNT, THE WINDS IN THIS WAY.

11:35:39 17 THE COURT: WELL, IT HAS A PROCESSOR THAT IS READING  
11:35:42 18 THE INFORMATION. IT'S PROGRAMMED TO DO SOMETHING WHEN IT HITS  
11:35:45 19 A CERTAIN GPS LOCATION. I GATHER THAT'S WHAT I'M BEING TOLD  
11:35:50 20 HERE.

11:35:51 21 YOU KNOW, I MEAN, IN A SENSE, AT THAT HIGH LEVEL, IT'S NOT  
11:35:57 22 COMPLICATED THAT WHEN THE GPS COORDINATES READ A CERTAIN  
11:36:01 23 LOCATION THAT IS INCORRECT, THE PROCESSOR IS GOING TO INCREASE  
11:36:07 24 THE ALTITUDE, DECREASE THE ALTITUDE, BASED ON THE WINDS, AND  
11:36:11 25 IT'S GOING TO READ THE WINDS, AND IT'S GOING TO DECIDE WHERE IN

11:36:15 1 THE STRATOSPHERE THIS BALLOON NEEDS TO BE TO REMAIN ON COURSE.

11:36:21 2 MR. BRUNS: I GUESS I WOULD JUST ADD, YOUR HONOR,  
11:36:23 3 THAT I THINK PLAIN MEANING IS STILL NOT THE RIGHT ANSWER HERE.

11:36:26 4 THE COURT: SO PLAIN MEANING, YOU KNOW, I THINK THAT  
11:36:29 5 EVEN IN THE MERE FIVE YEARS I'VE BEEN DOING THIS, THAT I THINK  
11:36:32 6 THE FEDERAL CIRCUIT HAS MOVED AWAY FROM PLAIN MEANING.

11:36:35 7 I THINK THESE TRIALS -- YOU'VE HAD MANY TRIALS, THIS IS NO  
11:36:38 8 END OF GRIEF, AND SO I'M TRYING TO AVOID SOME OF THAT BECAUSE I  
11:36:45 9 DON'T THINK -- I MEAN, IT'S EASY TO SAY PLAIN MEANING, AND WE  
11:36:51 10 THINK WE'VE SOLVED SOMETHING, AND THEN WE REALIZE WE'VE JUST  
11:36:54 11 POSTPONED THE DEBATE.

11:36:57 12 MR. BRUNS: FOR SURE. WE'VE SPENT A HALF AN HOUR  
11:36:59 13 TALKING ABOUT IT AFTER ALL THIS BRIEFING.

11:37:01 14 THE COURT: BUT MR. HOSIE REASONABLY SUBMITTED PLAIN  
11:37:04 15 AND ORDINARY, IT'S CERTAINLY LEGITIMATE TO DO THAT, AND I'M  
11:37:07 16 ASKING HIM TO COME UP WITH SOMETHING THAT HE WILL NEED SOME  
11:37:10 17 TIME TO WORK ON AND THEN YOU NEED TO REACT TO IT.

11:37:14 18 SO, YOU KNOW, YOU MAY BE RIGHT, THIS IS INDEFINITE, AND I  
11:37:17 19 DON'T WANT TO GET TOO FAR OFF, IT'S JUST THAT IF I DISAGREE  
11:37:21 20 WITH YOUR ARGUMENT, I WANT TO KNOW WHERE I AM.

11:37:26 21 AND, YOU KNOW, I'M A LITTLE BIT STUCK ON THE "TO PREVENT"  
11:37:29 22 LANGUAGE, WHICH I THINK TO READ THAT OUT OF THE CONSTRUCTION,  
11:37:35 23 WE KNOW EXACTLY WHY WE ARE TAKING INTO ACCOUNT THE WIND  
11:37:40 24 CURRENT, WHERE THERE'S AN EXACT REASON, AND THAT MAY BE ENOUGH  
11:37:42 25 TO MAKE THIS WORK.

11:37:43 1 MR. BRUNS: YOUR HONOR, I GUESS I WOULD JUST STAND BY  
11:37:48 2 SOME OF THE EARLIER COMMENTS I MADE.

11:37:49 3 THE COURT: OKAY. AND I'M GOING TO LOOK BACK AT YOUR  
11:37:52 4 ARGUMENT AND SEE HOW YOU ADDRESS THE "TO PREVENT" PART IN YOUR  
11:37:55 5 ARGUMENT. I DON'T RECALL THAT YOU DID.

11:37:57 6 MR. BRUNS: I DON'T BELIEVE IT'S IN THE BRIEF.

11:37:58 7 THE COURT: "TAKING INTO ACCOUNT," YOU EXTRACTED THAT  
11:38:03 8 AS A PHRASE.

11:38:04 9 MR. BRUNS: WE DID, YOUR HONOR.

11:38:05 10 THE COURT: I DID TOO, I FOLLOWED RIGHT ALONG WITH  
11:38:07 11 YOU.

11:38:07 12 MR. BRUNS: WE WERE LARGELY FOCUSED ON FOUR AND FIVE.

11:38:10 13 THE COURT: IS THAT A PROBLEM FOR YOU?

11:38:12 14 MR. BRUNS: I DON'T THINK SO, I THINK I'M JUST  
11:38:14 15 EXPLAINING WHERE OUR FOCUS WAS AT THE TIME OF OUR BRIEFING. WE  
11:38:17 16 HAD -- FOUR, FIVE AND 28 WERE ALL ON THE TABLE, AND IN THE  
11:38:21 17 REPLY BRIEF THEY NO LONGER ASSERT FOUR OR FIVE.

11:38:29 18 THE COURT: SO I'M JUST -- ONCE I ACTUALLY -- I'M  
11:38:31 19 JUST LOOKING AT FOUR AND FIVE NOW BECAUSE I DIDN'T REVIEW THEM  
11:38:37 20 BEFORE --

11:38:39 21 MR. BRUNS: SURE.

11:38:39 22 THE COURT: NO, FIVE SAYS TO "PREVENT THE AIRBORNE  
11:38:41 23 PLATFORM." SO FIVE DOES INCLUDE THAT LANGUAGE, FOUR DOES NOT.

11:38:49 24 MR. BRUNS: RIGHT.

11:38:50 25 THE COURT: AND MR. HOSIE, YOU SAID YOU DROPPED FOUR

11:38:53 1 BECAUSE OF THE OPPOSITION BUT FIVE WAS DROPPED FOR SEPARATE  
11:39:01 2 REASONS?

11:39:02 3 MR. MARTIN: YOUR HONOR, WHEN SPACE DATA MADE ITS  
11:39:05 4 ELECTION OF CERTAIN CLAIMS IT SIMPLY DIDN'T ELECT TO ASSERT  
11:39:09 5 CLAIM FIVE.

11:39:09 6 THE COURT: YOU'VE NEVER ASSERTED IT.

11:39:10 7 MR. MARTIN: CORRECT, YOUR HONOR. MAYBE IN THE  
11:39:12 8 INFRINGEMENT CONTENTIONS, BUT IT'S NOT IN THE INITIAL ELECTION  
11:39:16 9 OF THE ASSERTED CLAIMS.

11:39:17 10 THE COURT: OKAY. ALL RIGHT.

11:39:18 11 AND SO I GUESS THAT'S REALLY -- THAT'S PRETTY INTERESTING.  
11:39:20 12 AND SO FOUR WAS, I MEAN, YOU WOULD AGREE WITH THE -- YOU DON'T  
11:39:27 13 HAVE TO AGREE WITH IT, BUT BASED UPON THE STRENGTH OF THE  
11:39:29 14 ARGUMENT, YOU CHOSE NOT TO GO FORWARD ON THE CLAIM.

11:39:31 15 MR. MARTIN: NOT THE ARGUMENT THEY ARE MAKING HERE,  
11:39:33 16 YOUR HONOR.

11:39:34 17 THE COURT: THERE WERE OTHER REASONS. GOT IT.

11:39:36 18 MR. MARTIN: THE ARGUMENT ABOUT IPXL WAS SOMETHING  
11:39:40 19 THAT WE HAD TO CONSIDER.

11:39:41 20 THE COURT: OKAY.

11:39:42 21 MR. MARTIN: CLAIM 20, YOU WILL NOTE IS A METHOD  
11:39:45 22 CLAIM, YOUR HONOR, AS IS CLAIM 28.

11:39:47 23 THE COURT: OKAY. WELL, I DON'T HAVE ANY ANALYSIS  
11:39:49 24 FROM GOOGLE ON THIS "TO PREVENT" LANGUAGE. I THINK YOU JUST  
11:39:54 25 DIDN'T FOCUS ON THAT IN YOUR BRIEFING.

11:39:58 1 I ACTUALLY REALLY WAS -- I WOULD AGREE WITH YOU IF THIS  
11:40:04 2 WAS CLAIM FOUR THAT I WAS LOOKING AT, AND IT'S NOT. I GUESS I  
11:40:07 3 THINK THAT FILLS IN THE GAP HERE, BUT I DON'T HAVE ANY REVIEW  
11:40:11 4 FROM YOU ON IT THAT WAY. SO THAT'S --

11:40:15 5 MR. BRUNS: ALL RIGHT, YOUR HONOR. WE WOULD BE HAPPY  
11:40:17 6 TO PROVIDE ADDITIONAL BRIEFING, BUT I UNDERSTAND YOUR POINT.

11:40:20 7 THE COURT: MR. VAN NEST, DID YOU WANT TO MAKE A  
11:40:22 8 COMMENT?

11:40:22 9 MR. VAN NEST: I WAS GOING TO SAY, AREN'T WE GOING TO  
11:40:25 10 HAVE TO SET UP SOME SYSTEM HERE? WE'VE GOT TWO OR THREE  
11:40:29 11 CLAIMS, TERMS, WHERE WE ARE GOING TO BE NEGOTIATING, AND EITHER  
11:40:32 12 WE WILL REACH AGREEMENT, HOPEFULLY, AND THEN SUBMIT, BUT IF  
11:40:35 13 NOT, THEN WE WILL NEED TO, I THINK IT WOULD MAKE SENSE TO  
11:40:38 14 SUBMIT SOMETHING SHORT FROM EACH SIDE WITH THE COMPETING --  
11:40:43 15 WHEREVER WE GOT TO, AND THEN --

11:40:46 16 THE COURT: YEAH.

11:40:47 17 MR. VAN NEST: AND I WOULD LIKE TO HAVE A CHANCE,  
11:40:50 18 GIVEN THAT THESE CLAIMS HAVE BEEN DROPPED, I WOULD LIKE TO HAVE  
11:40:53 19 A CHANCE TO BRIEF THIS CLAIM 28 POINT THAT HAS COME UP, BECAUSE  
11:40:56 20 I THINK OUR FOCUS WAS REALLY DIFFERENT WHEN WE DID THE  
11:40:59 21 BRIEFING.

11:41:00 22 THE COURT: I THINK IT WAS.

11:41:01 23 AND I WOULD LIKE THE BENEFIT OF YOUR ANALYSIS. I CAN  
11:41:03 24 REJECT IT, BUT I DON'T HAVE ANYTHING NOW, AND IT'S JUST TOO  
11:41:08 25 COMPLICATED FOR YOU TO TRY TO FILL IT IN WHILE YOU ARE SITTING



11:41:11 1 HERE, SO I'M NOT ASKING YOU TO DO THAT.

11:41:13 2 THAT'S FINE. I THINK THAT'S FAIR. AND I THINK THAT SPACE  
11:41:18 3 DATA HAS MADE A GOOD, STRONG POINT THAT REALLY SHIFTED MY FOCUS  
11:41:23 4 HERE.

11:41:24 5 SO WHY DON'T -- I THINK THAT TAKES US TO THE END. WAS  
11:41:28 6 THERE ANY REBUTTAL ON THIS, OR WERE WE JUST GOING TO LEAVE IT  
11:41:31 7 WHERE WE ARE?

11:41:32 8 MR. HOSIE: NO.

11:41:32 9 MR. MARTIN: NO, YOUR HONOR.

11:41:33 10 THE COURT: OKAY.

11:41:33 11 SO WE NEED TO KIND OF RECAP MY NOTES, I DON'T KNOW HOW  
11:41:37 12 GOOD MY NOTES ARE HERE, ON WHAT YOU ARE GOING TO DO.

11:41:41 13 SO I'M GOING TO GET FURTHER BRIEFING FROM DEFENDANT ON  
11:41:51 14 TERM 8, REVIEWING CLAIM 28. AND THEN MR. HOSIE, ON THAT SAME  
11:42:10 15 TERM, YOU WERE GOING TO GIVE ME SOME CONSTRUCTION THAT WOULD BE  
11:42:16 16 YOUR IDEA OF PLAIN AND ORDINARY.

11:42:18 17 MR. HOSIE: INDEED, YOUR HONOR.

11:42:25 18 THE COURT: OKAY. THERE WERE TWO OTHERS THING I  
11:42:31 19 ASKED FOR.

11:42:35 20 MR. VAN NEST: "DETERMINING A DESIRED MOVEMENT," AND  
11:42:39 21 "MESH NETWORK."

11:42:42 22 I THINK I UNDERSTOOD YOUR HONOR TO BE ASKING THE PARTIES  
11:42:44 23 TO TRY TO MEET AND CONFER AND COME UP WITH AN AGREED UPON  
11:42:48 24 CONSTRUCTION.

11:42:49 25 THE COURT: SO "MESH NETWORK" YOU FELT YOU WERE CLOSE

11:42:54 1 AND WOULD MEET AND CONFER TO SEE IF YOU CAN AGREE.

11:42:57 2 MR. VAN NEST: RIGHT. I THINK WE ALSO FELT THAT WAY  
11:43:03 3 ON "DETERMINING A DESIRED MOVEMENT."

11:43:05 4 MR. HOSIE: YEAH, I ECHO THAT, I THINK THAT'S  
11:43:08 5 CORRECT.

11:43:08 6 THE COURT: OKAY.

11:43:09 7 MR. HOSIE: SO I THINK THAT IS PUT SQUARELY IN OUR  
11:43:13 8 COURT.

11:43:14 9 MR. VAN NEST: AND HONESTLY, YOUR HONOR, ON  
11:43:16 10 "SUBSTANTIALLY DRIFTS," I THINK WE MAY FILE A BRIEF, BUT WE  
11:43:22 11 SHOULD ALSO TRY TO REACH AGREEMENT THERE. THEY ARE GOING TO  
11:43:25 12 PROPOSE A CONSTRUCTION, IN LIGHT OF YOUR COMMENTS. WE MIGHT AS  
11:43:30 13 WELL TRY TO AGREE WITH THAT TOO.

11:43:35 14 IF WE ARE MEETING AND CONFERRING ON THE OTHER TWO, WHY NOT  
11:43:39 15 MEET AND CONFER ON THAT ONE AS WELL.

11:43:41 16 MR. HOSIE: I AGREE, YOUR HONOR.

11:43:42 17 THE COURT: I THINK THAT SOUNDS GOOD.

11:43:44 18 SO REGRETTABLY, MY TIME IS -- I NEED YOU TO GET THIS TO ME  
11:43:48 19 PRETTY SOON. SO WHAT CAN I --

11:43:55 20 MR. VAN NEST: WELL, IF YOU SET A DEADLINE FOR  
11:43:58 21 SUBMITTING EITHER THE STIPULATION --

11:44:00 22 THE COURT: RIGHT.

11:44:00 23 MR. VAN NEST: -- OR COMPETING CONSTRUCTIONS WITH  
11:44:04 24 SOMETHING SHORT, WE WILL MEET THAT DEADLINE.

11:44:07 25 MR. HOSIE: HOW ABOUT A WEEK FROM TODAY, YOUR HONOR?

11:44:09 1 THE COURT: A WEEK? THAT'S TERRIFIC. THAT WORKS  
11:44:12 2 JUST FINE.

11:44:13 3 MR. HOSIE: I UNDERSTAND THE COMPLEXITY, IT'S  
11:44:15 4 IMPORTANT TO DO IT QUICKLY.

11:44:16 5 THE COURT: I DON'T KNOW HOW MUCH WORK THIS IS, BUT I  
11:44:19 6 DO APPRECIATE YOU DOING IT IN ONE WEEK.

11:44:21 7 MR. HOSIE: THERE ARE A LOT OF LAWYERS HERE.

11:44:24 8 MR. VAN NEST: YOU KNOW WHAT, YOUR HONOR, COULD WE  
11:44:26 9 STRETCH IT OUT JUST INTO EARLY THAT FOLLOWING WEEK?

11:44:30 10 A WEEK FROM TODAY IS AUGUST 3RD, IF WE DID IT LIKE THE  
11:44:35 11 7TH, WHICH IS THE FOLLOWING TUESDAY, I THINK --

11:44:38 12 THE COURT: I'M OKAY WITH THAT. I'M GETTING VERY  
11:44:41 13 BUSY THAT WEEK, AS YOU KNOW.

11:44:43 14 OKAY. I THINK AUGUST 7TH IS REASONABLE. THAT'S THE  
11:44:47 15 TUESDAY, I BELIEVE, OF THE FOLLOWING WEEK.

11:44:49 16 MR. VAN NEST: IT IS.

11:44:50 17 THE COURT: I'M PERFECTLY COMFORTABLE WITH THAT, I  
11:44:52 18 THINK THAT'S REASONABLE.

11:44:53 19 AND -- YEAH. THE MORE TIME I CAN GIVE YOU TO AGREE, THE  
11:44:57 20 BETTER. I ACTUALLY -- I HOPE THIS HAS BEEN HELPFUL TO YOU.

11:45:02 21 MR. VAN NEST: OH, YES.

11:45:02 22 THE COURT: IT HAS CERTAINLY BEEN HELPFUL TO ME.

11:45:06 23 OKAY. THAT WORKS. AND IF YOU ARE GOING TO BRIEF THIS  
11:45:13 24 CLAIM 28, I JUST, I'M GOING TO LIMIT YOU TO THREE PAGES.

11:45:20 25 MR. VAN NEST: THAT'S FINE.

11:45:21 1 THE COURT: AND I THINK THAT'S AMPLE.

11:45:23 2 MR. VAN NEST: IT'S MORE THAN ENOUGH.

11:45:24 3 THE COURT: AND IT MAY BE MORE THAN YOU NEED, YES.

11:45:26 4 MR. VAN NEST: THAT'S FINE. WE WILL GET THAT IN ON  
11:45:28 5 THE 7TH AS WELL.

11:45:29 6 MR. HOSIE: YOUR HONOR, WOULD THAT BE RECIPROCAL  
11:45:32 7 RIGHT TO BRIEF?

11:45:33 8 THE COURT: I ACTUALLY THINK YOU BRIEFED IT. I  
11:45:35 9 WASN'T --

11:45:36 10 MR. HOSIE: OKAY.

11:45:39 11 THE COURT: I THINK YOU IDENTIFIED CLAIM 28.

11:45:42 12 MR. HOSIE: I DON'T KNOW WHAT THEY ARE GOING TO SAY,  
11:45:44 13 THOUGH.

11:45:44 14 SO NORMALLY IF THEY HAD PUT IT IN THEIR BRIEF, WE WOULD  
11:45:48 15 HAVE AN OPPORTUNITY TO REPLY.

11:45:50 16 THE COURT: SO I HAVE TO HAVE EVERYTHING SUBMITTED BY  
11:45:52 17 THE 7TH.

11:45:52 18 MR. HOSIE: UNDERSTOOD. WE COULD DO EVERYTHING THE  
11:45:52 19 SAME DAY.

11:45:54 20 THE COURT: SO YOU WANT TO DO IT SIMULTANEOUS OR --

11:45:59 21 MR. VAN NEST: THAT'S FINE. I MEAN, IT WAS IN THE  
11:45:59 22 REPLY BRIEF:

11:45:59 23 THE COURT: I THOUGHT IT WAS IN THE REPLY BRIEF.

11:46:02 24 MR. VAN NEST: THAT'S WHY WE DIDN'T PUT IT IN OUR  
11:46:03 25 BRIEF.

11:46:04 1 MR. HOSIE: IF WE COULD HAVE ONE DAY TO RESPOND. IF  
11:46:07 2 THEY DO IT ON THE 7TH, WE WILL DO IT THE NEXT DAY.

11:46:10 3 THE COURT: I WILL GIVE YOU TWO PAGES TO RESPOND.

11:46:12 4 MR. HOSIE: YES, THE NEXT DAY.

11:46:13 5 THE COURT: AND DUE AUGUST 8TH.

11:46:15 6 MR. HOSIE: THANK YOU, YOUR HONOR.

11:46:19 7 THE COURT: OKAY. ALWAYS HORSE TRADING.

11:46:22 8 ALL RIGHT. I THINK THAT TAKES CARE OF EVERYTHING. THIS  
11:46:28 9 IS -- YOU KNOW, I ACTUALLY, LAST WEEK, FEARED THAT THE TUTORIAL  
11:46:33 10 HAD BEEN AT TOO HIGH A LEVEL, NO PUN INTENDED, BUT IN FACT IT  
11:46:38 11 WAS ALL I NEEDED ONCE I ACTUALLY DUG DEEP INTO THIS, SO I  
11:46:41 12 REALLY APPRECIATE THAT.

11:46:42 13 I'VE HAD TUTORIALS THAT WERE TOO HARD AND I DIDN'T RETAIN  
11:46:45 14 ANYTHING, BUT I BECOME SUSPICIOUS OF ONES THAT I UNDERSTAND,  
11:46:48 15 THINKING THEY MIGHT BE TOO SIMPLE. BUT REALLY, I THINK THAT  
11:46:52 16 GAVE ME THE TOOLS THAT I NEEDED TO REALLY DIG INTO THE DISPUTES  
11:46:56 17 THAT WE HAVE HERE.

11:46:57 18 SO I REALLY WANT TO THANK YOU FOR THAT. I THINK IT WAS  
11:47:00 19 WELL DONE, AND THE TECHNOLOGY IS ENDLESSLY INTERESTING AND FUN  
11:47:05 20 TO CONTEMPLATE.

11:47:07 21 OKAY.

11:47:07 22 MR. VAN NEST: THANK YOU, YOUR HONOR.

11:47:08 23 THE COURT: I DON'T HAVE ANYTHING ELSE.

11:47:09 24 THANK YOU ALL.

11:47:10 25 MR. VAN NEST: THANK YOU.

11:47:14

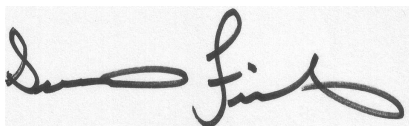
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(THE PROCEEDINGS WERE CONCLUDED AT 11:47 A.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 7/27/18